

PERSONAL SERVICE AGREEMENT
CO-802A REV 2/08

STATE OF CONNECTICUT
OFFICE OF THE STATE COMPTROLLER

1. PREPARE IN QUADRUPLICATE

2. THE STATE BUSINESS UNIT AND THE CONTRACTOR AS LISTED BELOW HEREBY ENTER INTO AN AGREEMENT SUBJECT TO THE TERMS AND CONDITIONS STATED HEREIN AND/OR ATTACHED HERETO AND SUBJECT TO THE PROVISIONS OF SECTION 4-98 OF THE CONNECTICUT GENERAL STATUTES AS APPLICABLE.

3. ACCEPTANCE OF THIS CONTRACT IMPLIES CONFORMANCE WITH TERMS AND CONDITIONS SET FORTH BY THE OFFICE OF POLICY AND MANAGEMENT PERSONAL SERVICE AGREEMENT STANDARDS AND PROCEDURES.

(1) ☒ ORIGINAL ☐ AMENDMENT (2) IDENTIFICATION NO. PS 2017-26337

CONTRACTOR	(3) CONTRACTOR NAME	Express Scripts, Inc. & Medco Containment Life Ins. Co.	(4) ARE YOU PRESENTLY A STATE EMPLOYEE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
	CONTRACTOR ADDRESS	One Express Way, St. Louis, MO 63121	CONTRACTOR FEIN/SSN - SUFFIX 43-1420563 & 42-1425239

STATE AGENCY	(5) AGENCY NAME AND ADDRESS	CT Teachers' Retirement Board, 765 Asylum Avenue, Hartford, CT 06105
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CONTRACT PERIOD	(6) DATE (FROM)	January 1, 2018	THROUGH (TO)	December 31, 2020	(7) INDICATE	<input type="checkbox"/> MASTER AGREEMENT <input type="checkbox"/> CONTRACT AWARD NO. <input checked="" type="checkbox"/> NEITHER

CANCELLATION CLAUSE	THIS AGREEMENT SHALL REMAIN IN FULL FORCE AND EFFECT FOR THE ENTIRE TERM OF THE CONTRACT PERIOD STATED ABOVE UNLESS CANCELED BY THE STATE BUSINESS UNIT, BY GIVING THE CONTRACTOR WRITTEN NOTICE OF SUCH INTENTION (REQUIRED DAYS NOTICE SPECIFIED AT RIGHT)	(8) REQUIRED NO. OF DAYS WRITTEN NOTICE	30
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COMPLETE DESCRIPTION OF SERVICE	(9) CONTRACTOR AGREES TO: (Include special provisions - Attach additional blank sheets if necessary)
	Vendor will be providing pharmacy benefit management services.
	See Exhibit A (Description of Goods and Services) for a more complete description of services.
	See Exhibit C (Additional Terms and Conditions) for additional terms related to the provision of the services.

COST AND SCHEDULE OF PAYMENTS	(10) PAYMENT TO BE MADE UNDER THE FOLLOWING SCHEDULE UPON RECEIPT OF PROPERLY EXECUTED AND APPROVED INVOICES
	Claims reimbursement invoices will be provided weekly and administrative fee invoices will be provided monthly as set forth in Section 1.1 of Exhibit B-1. Payment will be made on all invoices within two (2) days of receipt as set forth in Section 1.2 of Exhibit B-2. Claims reimbursement amounts are set forth in Exhibit B-1.
	Administrative and Clinical Fee amounts are set forth in Exhibit B-2. Rebate amounts which will be paid to the Agency are set forth in Exhibit B-3.

(11) OBLIGATED AMOUNT	\$9,500,000.00
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(12) AMOUNT	(13) FUND	(14) DEPARTMENT	(15) SID	(16) PROGRAM	(17) ACCOUNT	(18) PROJECT/ GRANT	(19) CHARTFIELD 1	(20) CHARTFIELD 2	(21) BUDGET REFERENCE
\$1,400,000	31012	TRB77500	42358						FYE 2018
\$3,000,000	31012	TRB77500	42358						FYE 2019
\$3,200,000	31012	TRB77500	42358						FYE 2020
\$1,900,000	31012	TRB77500	42358						FYE 2021

An individual entering into a Personal Service Agreement with the State of Connecticut is contracting under a "work-for-hire" arrangement. As such, the individual is an independent contractor, and does not satisfy the characteristics of an employee under the common law rules for determining the employer/employee relationship of Internal Revenue Code Section 3121 (d) (2). Individuals performing services as independent contractors are not employees of the State of Connecticut and are responsible themselves for payment of all State and local income taxes, federal income taxes and Federal Insurance Contribution Act (FICA) taxes.

ACCEPTANCES AND APPROVALS		(22) STATUTORY AUTHORITY 10-183t	
(23) CONTRACTOR (OWNER OR AUTHORIZED SIGNATURE)		TITLE	VP-COMMERCIAL DIVISION
(24) AGENCY (AUTHORIZED OFFICIAL)		TITLE	TRB Administrator
(25) OFFICE OF POLICY & MANAGEMENT/DEPARTMENT OF ADMINISTRATIVE SERVICES		TITLE	
(26) ATTORNEY GENERAL (APPROVED AS TO FORM)		TITLE	ASSOC. ATTY. GENERAL
		DATE	3/29/2018
		DATE	4/4/2018
		DATE	4/13/18

DISTRIBUTION: ORIGINAL CONTRACTOR PHOTOCOPY-OPM/DAS PHOTOCOPY-ATTORNEY GENERAL PHOTOCOPY-AGENCY

EXPRESS SCRIPTS, INC.
CERTIFICATE OF THE SECRETARY

The undersigned duly elected Secretary of Express Scripts, Inc., a Delaware corporation (the "Company"), does hereby certify that, pursuant to resolutions adopted and updated from time to time by the Company's Board of Directors, Express Scripts, Inc. is authorized to enter into pharmacy benefit management contracts with its clients. In addition, the undersigned certifies that the Company's Vice President is authorized to execute bids, responses to requests for proposals, contracts, amendments to contracts and other related documents with any client or potential client for pharmacy benefit management or related services.

The undersigned further certifies that since at least March 1, 2018, Kristy Dougherty was and currently is qualified and presently holds the office of Vice President and also holds the title of Vice President, Commercial Division.

Certified to this 11th day of April, 2018.



Martin P. Akins, Secretary



MEDCO CONTAINMENT LIFE INSURANCE COMPANY
CERTIFICATE OF THE SECRETARY

The undersigned duly elected Secretary of Medco Containment Life Insurance Company, a Pennsylvania corporation (the "Company"), does hereby certify that, pursuant to resolutions adopted and updated from time to time by the Company's Board of Directors, Medco Containment Life Insurance Company is authorized to enter into pharmacy benefit management contracts with its clients. In addition, the undersigned certifies that the Company's Vice President is authorized to execute bids, responses to requests for proposals, contracts, amendments to contracts and other related documents with any client or potential client for pharmacy benefit management or related services.

The undersigned further certifies that since at least March 1, 2018, Kristy Dougherty was and currently is qualified and presently holds the office of Vice President and also holds the title of Vice President, Commercial Division.

Certified to this 11th day of April, 2018.



A handwritten signature in black ink, appearing to read "M. Akins".

Martin P. Akins, Secretary



STATE OF CONNECTICUT
NONDISCRIMINATION CERTIFICATION — Affidavit
By Entity
For Contracts Valued at \$50,000 or More

Documentation in the form of an affidavit signed under penalty of false statement by a chief executive officer, president, chairperson, member, or other corporate officer duly authorized to adopt corporate, company, or partnership policy that certifies the contractor complies with the nondiscrimination agreements and warranties under Connecticut General Statutes §§ 4a-60 and 4a-60a, as amended

INSTRUCTIONS:

For use by an entity (corporation, limited liability company, or partnership) when entering into any contract type with the State of Connecticut valued at \$50,000 or more for any year of the contract. Complete all sections of the form. Sign form in the presence of a Commissioner of Superior Court or Notary Public. Submit to the awarding State agency prior to contract execution.

AFFIDAVIT:

I, the undersigned, am over the age of eighteen (18) and understand and appreciate the obligations of

an oath. I am Vice President, Commercial Division of Express Scripts, Inc., an entity
Signatory's Title Name of Entity

duly formed and existing under the laws of Delaware
Name of State or Commonwealth

I certify that I am authorized to execute and deliver this affidavit on behalf of

Express Scripts, Inc. and that Express Scripts, Inc.
Name of Entity Name of Entity

has a policy in place that complies with the nondiscrimination agreements and warranties of Connecticut General Statutes §§ 4a-60 and 4a-60a, as amended.

David L. Brodsky

Authorized Signatory

David L. Brodsky

Printed Name

Sworn and subscribed to before me on this

3rd day of JANUARY 20 18

Bonita L Benda
Commissioner of the Superior Court/ Notary Public

Commission Expiration Date



BONITA L BENDA
My Commission Expires
August 16, 2020
St. Louis City
Commission #16942292

**STATE OF CONNECTICUT**

Written or electronic PDF copy of the written certification to accompany a large state contract pursuant to P.A. No. 13-162 (Prohibiting State Contracts With Entities Making Certain Investments In Iran)

Respondent Name: Express Scripts, Inc.

INSTRUCTIONS:

CHECK ONE: ☐ Initial Certification.
☒ Amendment or renewal.

A. Who must complete and submit this form. Effective October 1, 2013, this form must be submitted for any large state contract, as defined in section 4-250 of the Connecticut General Statutes. This form must always be submitted with the bid or proposal, or if there was no bid process, with the resulting contract, regardless of where the principal place of business is located.

Pursuant to P.A. No. 13-162, upon submission of a bid or prior to executing a large state contract, **the certification portion of this form must be completed** by any corporation, general partnership, limited partnership, limited liability partnership, joint venture, nonprofit organization or other business organization **whose principal place of business is located outside of the United States**. United States subsidiaries of foreign corporations are exempt. For purposes of this form, a "foreign corporation" is one that is organized and incorporated outside the United States of America.

Check applicable box:

- ☒ Respondent's principal place of business is within the United States or Respondent is a United States subsidiary of a foreign corporation. Respondents who check this box **are not required to complete the certification portion of this form**, but must submit this form with its Invitation to Bid ("ITB"), Request for Proposal ("RFP") or contract package if there was no bid process.
- ☐ Respondent's principal place of business is outside the United States and it is not a United States subsidiary of a foreign corporation. **CERTIFICATION required.** Please complete the certification portion of this form and submit it with the ITB or RFP response or contract package if there was no bid process.

B. Additional definitions.

- 1) "Large state contract" has the same meaning as defined in section 4-250 of the Connecticut General Statutes;
- 2) "Respondent" means the person whose name is set forth at the beginning of this form; and
- 3) "State agency" and "quasi-public agency" have the same meanings as provided in section 1-79 of the Connecticut General Statutes.

C. Certification requirements.

No state agency or quasi-public agency shall enter into any large state contract, or amend or renew any such contract with any Respondent whose principal place of business is located outside the United States and is not a United States subsidiary of a foreign corporation unless the Respondent has submitted this certification.

Complete all sections of this certification and sign and date it, under oath, in the presence of a Commissioner of the Superior Court, a Notary Public or a person authorized to take an oath in another state.

CERTIFICATION:

I, the undersigned, am the official authorized to execute contracts on behalf of the Respondent. I certify that:

- ☐ Respondent has made no direct investments of twenty million dollars or more in the energy sector of Iran on or after October 1, 2013, as described in Section 202 of the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010.
- ☐ Respondent has either made direct investments of twenty million dollars or more in the energy sector of Iran on or after October 1, 2013, as described in Section 202 of the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010, or Respondent made such an investment prior to October 1, 2013 and has now increased or renewed such an investment on or after said date, or both.

Sworn as true to the best of my knowledge and belief, subject to the penalties of false statement.

Printed Respondent Name _____

Printed Name of Authorized Official _____

Signature of Authorized Official _____

Subscribed and acknowledged before me this _____ day of _____, 20____.

Commissioner of the Superior Court (or Notary Public)

My Commission Expires



STATE OF CONNECTICUT

GIFT AND CAMPAIGN CONTRIBUTION CERTIFICATION

Written or electronic certification to accompany a State contract with a value of \$50,000 or more, pursuant to C.G.S. §§ 4-250, 4-252(c) and 9-612(f)(2) and Governor Dannel P. Malloy's Executive Order 49.

INSTRUCTIONS:

Complete all sections of the form. Attach additional pages, if necessary, to provide full disclosure about any lawful campaign contributions made to campaigns of candidates for statewide public office or the General Assembly, as described herein. Sign and date the form, under oath, in the presence of a Commissioner of the Superior Court or Notary Public. Submit the completed form to the awarding State agency at the time of initial contract execution and if there is a change in the information contained in the most recently filed certification, such person shall submit an updated certification either (i) not later than thirty (30) days after the effective date of such change or (ii) upon the submittal of any new bid or proposal for a contract, whichever is earlier. Such person shall also submit an accurate, updated certification not later than fourteen days after the twelve-month anniversary of the most recently filed certification or updated certification.

CHECK ONE: ☐ Initial Certification ☐ 12 Month Anniversary Update (Multi-year contracts only.)

☒ Updated Certification because of change of information contained in the most recently filed certification or twelve-month anniversary update.

GIFT CERTIFICATION:

As used in this certification, the following terms have the meaning set forth below:

- 1) "Contract" means that contract between the State of Connecticut (and/or one or more of its agencies or instrumentalities) and the Contractor, attached hereto, or as otherwise described by the awarding State agency below;
- 2) If this is an Initial Certification, "Execution Date" means the date the Contract is fully executed by, and becomes effective between, the parties; if this is a twelve-month anniversary update, "Execution Date" means the date this certification is signed by the Contractor;
- 3) "Contractor" means the person, firm or corporation named as the contractor below;
- 4) "Applicable Public Official or State Employee" means any public official or state employee described in C.G.S. §4-252(c)(1)(i) or (ii);
- 5) "Gift" has the same meaning given that term in C.G.S. § 4-250(1);
- 6) "Principals or Key Personnel" means and refers to those principals and key personnel of the Contractor, and its or their agents, as described in C.G.S. §§ 4-250(5) and 4-252(c)(1)(B) and (C).

I, the undersigned, am a Principal or Key Personnel of the person, firm or corporation authorized to execute this certification on behalf of the Contractor. I hereby certify that, no gifts were made by (A) such person, firm, corporation, (B) any principals and key personnel of the person firm or corporation who participate substantially in preparing bids, proposals or negotiating state contracts or (C) any agent of such, firm, corporation, or principals or key personnel who participates substantially in preparing bids, proposals or negotiating state contracts, to (i) any public official or state employee of the state agency or quasi-public agency soliciting bids or proposals for state contracts who participates substantially in the preparation of bid solicitations or request for proposals for state contracts or the negotiation or award of state contracts or (ii) any public official or state employee of any other state agency, who has supervisory or appointing authority over such state agency or quasi-public agency.

I further certify that no Principals or Key Personnel know of any action by the Contractor to circumvent (or which would result in the circumvention of) the above certification regarding **Gifts** by providing for any other Principals, Key Personnel, officials, or employees of the Contractor, or its or their agents, to make a **Gift** to any Applicable Public Official or State Employee. I further certify that the Contractor made the bid or proposal for the Contract without fraud or collusion with any person.

CAMPAIGN CONTRIBUTION CERTIFICATION:

I further certify that, on or after January 1, 2011, neither the Contractor nor any of its principals, as defined in C.G.S. § 9-612(f)(1), has made any **campaign contributions** to, or solicited any contributions on behalf of, any exploratory committee, candidate committee, political committee, or party committee established by, or supporting or authorized to support, any candidate for statewide public office, in violation of C.G.S. § 9-612(f)(2)(A). I further certify that **all lawful campaign contributions** that have been made on or after January 1, 2011 by the Contractor or any of its principals, as defined in C.G.S. § 9-612(f)(1), to, or solicited on behalf of, any exploratory committee, candidate committee, political committee, or party committee established by, or supporting or authorized to support any candidates for statewide public office or the General Assembly, are listed below:

Lawful Campaign Contributions to Candidates for Statewide Public Office:

<u>Contribution Date</u>	<u>Name of Contributor</u>	<u>Recipient</u>	<u>Value</u>	<u>Description</u>

Lawful Campaign Contributions to Candidates for the General Assembly:

<u>Contribution Date</u>	<u>Name of Contributor</u>	<u>Recipient</u>	<u>Value</u>	<u>Description</u>

Sworn as true to the best of my knowledge and belief, subject to the penalties of false statement.

JONAH C. HOULTS
Printed Contractor Name
EXPRESS SCRIPTS INC
Jonah C. Hoults
Signature of Authorized Official

JONAH C. HOULTS
Printed Name of Authorized Official

Subscribed and acknowledged before me this 3 day of January, 2018.

Michelle Goff
Commissioner of the Superior Court (or Notary Public)

May 14, 2021
My Commission Expires





**STATE OF CONNECTICUT
CERTIFICATION OF STATE AGENCY OFFICIAL OR EMPLOYEE
AUTHORIZED TO EXECUTE CONTRACT**

Certification to accompany a State contract, having a value of \$50,000 or more, pursuant to Connecticut General Statutes §§ 4-250 and 4-252(b), and Governor Dannel P. Malloy's Executive Order 49.

INSTRUCTIONS:

Complete all sections of the form. Sign and date in the presence of a Commissioner of the Superior Court or Notary Public. Submit to the awarding State agency at the time of contract execution.

CERTIFICATION:

I, the undersigned State agency official or State employee, certify that (1) I am authorized to execute the attached contract on behalf of the State agency named below, and (2) the selection of the contractor named below was not the result of collusion, the giving of a gift or the promise of a gift, compensation, fraud or inappropriate influence from any person.

Sworn as true to the best of my knowledge and belief, subject to the penalties of false statement.

Express Scripts, Inc.

Contractor Name

Teachers' Retirement Board

Awarding State Agency

Darlene Perez

State Agency Official or Employee Signature

Darlene Perez

Printed Name

1/12/18

Date

Administrator

Title

Sworn and subscribed before me on this 12th day of January, 2018.

Charlene Hill

Commissioner of the Superior Court
or Notary Public

2/28/2021

My Commission Expires

Charlene Hill
NOTARY PUBLIC
State of Connecticut
My Commission Expires 2/28/2021



STATE OF CONNECTICUT CONSULTING AGREEMENT AFFIDAVIT

Affidavit to accompany a bid or proposal for the purchase of goods and services with a value of \$50,000 or more in a calendar or fiscal year, pursuant to Connecticut General Statutes §§ 4a-81(a) and 4a-81(b). For sole source or no bid contracts the form is submitted at time of contract execution.

INSTRUCTIONS:

If the bidder or vendor has entered into a consulting agreement, as defined by Connecticut General Statutes § 4a-81(b)(1): Complete all sections of the form. If the bidder or contractor has entered into more than one such consulting agreement, use a separate form for each agreement. Sign and date the form in the presence of a Commissioner of the Superior Court or Notary Public. **If the bidder or contractor has not entered into a consulting agreement, as defined by Connecticut General Statutes § 4a-81(b)(1):** Complete only the shaded section of the form. Sign and date the form in the presence of a Commissioner of the Superior Court or Notary Public.

Submit completed form to the awarding State agency with bid or proposal. For a sole source award, submit completed form to the awarding State agency at the time of contract execution.

This affidavit must be amended if there is any change in the information contained in the most recently filed affidavit not later than (i) thirty days after the effective date of any such change or (ii) upon the submittal of any new bid or proposal, whichever is earlier.

AFFIDAVIT: [Number of Affidavits Sworn and Subscribed On This Day: ____]

I, the undersigned, hereby swear that I am a principal or key personnel of the bidder or contractor awarded a contract, as described in Connecticut General Statutes § 4a-81(b), or that I am the individual awarded such a contract who is authorized to execute such contract. I further swear that I have not entered into any consulting agreement in connection with such contract, **except for the agreement listed below:**

Consultant's Name and Title

Name of Firm (if applicable)

Start Date

End Date

Cost

Description of Services Provided:

Is the consultant a former State employee or former public official? ☐ YES ☐ NO

If YES:

Name of Former State Agency

Termination Date of Employment

Sworn as true to the best of my knowledge and belief, subject to the penalties of false statement.

EXPRESS SCRIPTS INC. [Signature] 1/13/18
Printed Name of Bidder or Contractor Signature of Principal or Key Personnel Date

JONAH C. HOLTS
Printed Name (of above)

CT Teachers' Retirement Board
Awarding State Agency

Sworn and subscribed before me on this 3 day of January, 2018.

[Signature]
Commissioner of the Superior Court
or Notary Public

May 14, 2021
My Commission Expires





STATE OF CONNECTICUT

AFFIRMATION OF RECEIPT OF STATE ETHICS LAWS SUMMARY

Written or electronic affirmation to accompany a large State construction or procurement contract, having a cost of more than \$500,000, pursuant to Connecticut General Statutes §§ 1-101mm and 1-101qq

INSTRUCTIONS:

Complete all sections of the form. Submit completed form to the awarding State agency or contractor, as directed below.

CHECK ONE:

- ☐ I am a person seeking a large State construction or procurement contract. I am submitting this affirmation to the awarding State agency with my bid or proposal. [Check this box if the contract will be awarded through a competitive process.]
- ☒ I am a contractor who has been awarded a large State construction or procurement contract. I am submitting this affirmation to the awarding State agency at the time of contract execution. [Check this box if the contract was a sole source award.]
- ☐ I am a subcontractor or consultant of a contractor who has been awarded a large State construction or procurement contract. I am submitting this affirmation to the contractor.
- ☐ I am a contractor who has already filed an affirmation, but I am updating such affirmation either (i) no later than thirty (30) days after the effective date of any such change or (ii) upon the submittal of any new bid or proposal, whichever is earlier.

IMPORTANT NOTE:

Within fifteen (15) days after the request of such agency, institution or quasi-public agency for such affirmation contractors shall submit the affirmations of their subcontractors and consultants to the awarding State agency. Failure to submit such affirmations in a timely manner shall be cause for termination of the large State construction or procurement contract.

AFFIRMATION:

I, the undersigned person, contractor, subcontractor, consultant, or the duly authorized representative thereof, affirm (1) receipt of the summary of State ethics laws* developed by the Office of State Ethics pursuant to Connecticut General Statutes § 1-81b and (2) that key employees of such person, contractor, subcontractor, or consultant have read and understand the summary and agree to comply with its provisions.

* The summary of State ethics laws is available on the State of Connecticut's Office of State Ethics website.

Signature

KRISTY DOUGHERTY

Printed Name

EXPRESS SCRIPTS, INC.

Firm or Corporation (if applicable)

ONE EXPRESS WAY

Street Address

Date

3/28/2018

Title

VICE PRESIDENT - COMMERCIAL DIVISION

ST. LOUIS

City

MO

State

63121

Zip

CT Teachers' Retirement Board

Awarding State Agency

SEEC FORM 10

CONNECTICUT STATE ELECTIONS ENFORCEMENT COMMISSION

Rev. 1/11

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**Notice to Executive Branch State Contractors and Prospective State Contractors of Campaign Contribution and Solicitation Limitations*****Acknowledgement of Receipt of Explanation of Prohibitions for Incorporation in Contracting and Bidding Documents***

This notice is provided under the authority of Connecticut General Statutes §9-612(g)(2), as amended by P.A. 10-1, and is for the purpose of informing state contractors and prospective state contractors of the following law (*italicized words are defined on the reverse side of this page*).

CAMPAIGN CONTRIBUTION AND SOLICITATION LIMITATIONS

No *state contractor, prospective state contractor, principal of a state contractor or principal of a prospective state contractor*, with regard to a *state contract or state contract solicitation* with or from a state agency in the executive branch or a quasi-public agency or a holder, or principal of a holder of a valid prequalification certificate, shall make a contribution to (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee (which includes town committees).

In addition, no holder or principal of a holder of a valid prequalification certificate, shall make a contribution to (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of State senator or State representative, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee.

On and after January 1, 2011, no state contractor, prospective state contractor, principal of a state contractor or principal of a prospective state contractor, with regard to a state contract or state contract solicitation with or from a state agency in the executive branch or a quasi-public agency or a holder, or principal of a holder of a valid prequalification certificate, shall **knowingly solicit** contributions from the state contractor's or prospective state contractor's employees or from a *subcontractor or principals of the subcontractor* on behalf of (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee.

DUTY TO INFORM

State contractors and prospective state contractors are required to inform their principals of the above prohibitions, as applicable, and the possible penalties and other consequences of any violation thereof.

PENALTIES FOR VIOLATIONS

Contributions or solicitations of contributions made in violation of the above prohibitions may result in the following civil and criminal penalties:

Civil penalties—Up to \$2,000 or twice the amount of the prohibited contribution, whichever is greater, against a principal or a contractor. Any state contractor or prospective state contractor which fails to make reasonable efforts to comply with the provisions requiring notice to its principals of these prohibitions and the possible consequences of their violations may also be subject to civil penalties of up to \$2,000 or twice the amount of the prohibited contributions made by their principals.

Criminal penalties—Any knowing and willful violation of the prohibition is a Class D felony, which may subject the violator to imprisonment of not more than 5 years, or not more than \$5,000 in fines, or both.

CONTRACT CONSEQUENCES

In the case of a state contractor, contributions made or solicited in violation of the above prohibitions may result in the contract being voided.

In the case of a prospective state contractor, contributions made or solicited in violation of the above prohibitions shall result in the contract described in the state contract solicitation not being awarded to the prospective state contractor, unless the State Elections Enforcement Commission determines that mitigating circumstances exist concerning such violation.

The State shall not award any other state contract to anyone found in violation of the above prohibitions for a period of one year after the election for which such contribution is made or solicited, unless the State Elections Enforcement Commission determines that mitigating circumstances exist concerning such violation.

SEEC FORM 10

CONNECTICUT STATE ELECTIONS ENFORCEMENT COMMISSION

Rev. 1/11

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DEFINITIONS

"State contractor" means a person, business entity or nonprofit organization that enters into a state contract. Such person, business entity or nonprofit organization shall be deemed to be a state contractor until December thirty-first of the year in which such contract terminates. "State contractor" does not include a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person's capacity as a state or quasi-public agency employee.

"Prospective state contractor" means a person, business entity or nonprofit organization that (i) submits a response to a state contract solicitation by the state, a state agency or a quasi-public agency, or a proposal in response to a request for proposals by the state, a state agency or a quasi-public agency, until the contract has been entered into, or (ii) holds a valid prequalification certificate issued by the Commissioner of Administrative Services under section 4a-100. "Prospective state contractor" does not include a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person's capacity as a state or quasi-public agency employee.

"Principal of a state contractor or prospective state contractor" means (i) any individual who is a member of the board of directors of, or has an ownership interest of five per cent or more in, a state contractor or prospective state contractor, which is a business entity, except for an individual who is a member of the board of directors of a nonprofit organization, (ii) an individual who is employed by a state contractor or prospective state contractor, which is a business entity, as president, treasurer or executive vice president, (iii) an individual who is the chief executive officer of a state contractor or prospective state contractor, which is not a business entity, or if a state contractor or prospective state contractor has no such officer, then the officer who duly possesses comparable powers and duties, (iv) an officer or an employee of any state contractor or prospective state contractor who has *managerial or discretionary responsibilities with respect to a state contract*, (v) the spouse or a *dependent child* who is eighteen years of age or older of an individual described in this subparagraph, or (vi) a political committee established or controlled by an individual described in this subparagraph or the business entity or nonprofit organization that is the state contractor or prospective state contractor.

"State contract" means an agreement or contract with the state or any state agency or any quasi-public agency, let through a procurement process or otherwise, having a value of fifty thousand dollars or more, or a combination or series of such agreements or contracts having a value of one hundred thousand dollars or more in a calendar year, for (i) the rendition of services, (ii) the furnishing of any goods, material, supplies, equipment or any items of any kind, (iii) the construction, alteration or repair of any public building or public work, (iv) the acquisition, sale or lease of any land or building, (v) a licensing arrangement, or (vi) a grant, loan or loan guarantee. "State contract" does not include any agreement or contract with the state, any state agency or any quasi-public agency that is exclusively federally funded, an education loan, a loan to an individual for other than commercial purposes or any agreement or contract between the state or any state agency and the United States Department of the Navy or the United States Department of Defense.

"State contract solicitation" means a request by a state agency or quasi-public agency, in whatever form issued, including, but not limited to, an invitation to bid, request for proposals, request for information or request for quotes, inviting bids, quotes or other types of submittals, through a competitive procurement process or another process authorized by law waiving competitive procurement.

"Managerial or discretionary responsibilities with respect to a state contract" means having direct, extensive and substantive responsibilities with respect to the negotiation of the state contract and not peripheral, clerical or ministerial responsibilities.

"Dependent child" means a child residing in an individual's household who may legally be claimed as a dependent on the federal income tax of such individual.

"Solicit" means (A) requesting that a contribution be made, (B) participating in any fund-raising activities for a candidate committee, exploratory committee, political committee or party committee, including, but not limited to, forwarding tickets to potential contributors, receiving contributions for transmission to any such committee or bundling contributions, (C) serving as chairperson, treasurer or deputy treasurer of any such committee, or (D) establishing a political committee for the sole purpose of soliciting or receiving contributions for any committee. Solicit does not include: (i) making a contribution that is otherwise permitted by Chapter 155 of the Connecticut General Statutes; (ii) informing any person of a position taken by a candidate for public office or a public official, (iii) notifying the person of any activities of, or contact information for, any candidate for public office; or (iv) serving as a member in any party committee or as an officer of such committee that is not otherwise prohibited in this section.

"Subcontractor" means any person, business entity or nonprofit organization that contracts to perform part or all of the obligations of a state contractor's state contract. Such person, business entity or nonprofit organization shall be deemed to be a subcontractor until December thirty first of the year in which the subcontract terminates. "Subcontractor" does not include (i) a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or (ii) an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person's capacity as a state or quasi-public agency employee.

"Principal of a subcontractor" means (i) any individual who is a member of the board of directors of, or has an ownership interest of five per cent or more in, a subcontractor, which is a business entity, except for an individual who is a member of the board of directors of a nonprofit organization, (ii) an individual who is employed by a subcontractor, which is a business entity, as president, treasurer or executive vice president, (iii) an individual who is the chief executive officer of a subcontractor, which is not a business entity, or if a subcontractor has no such officer, then the officer who duly possesses comparable powers and duties, (iv) an officer or an employee of any subcontractor who has *managerial or discretionary responsibilities with respect to a subcontract with a state contractor*, (v) the spouse or a *dependent child* who is eighteen years of age or older of an individual described in this subparagraph, or (vi) a political committee established or controlled by an individual described in this subparagraph or the business entity or nonprofit organization that is the subcontractor.

SEEC FORM 10

CONNECTICUT STATE ELECTIONS ENFORCEMENT COMMISSION

Rev. 1/11

Page 3 of 3

**ACKNOWLEDGEMENT OF RECEIPT**

Jon C Hays
SIGNATURE

1/3/18
DATE (mm/dd/yyyy)

NAME OF SIGNER

First Name	MI	Last Name	Suffix
JONAH	C	HAYS	

TITLE

VICE PRESIDENT- CORPORATE GOVERNMENT AFFAIRS

COMPANY NAME

Express SCRIPTS INC.

Additional information may be found on the website of the State Elections Enforcement Commission,
www.ct.gov/seec

Click on the link to "Lobbyist/Contractor Limitations"

CONTRACT

Between

THE STATE OF CONNECTICUT

Acting by its

TEACHERS' RETIREMENT BOARD

AND

**Express Scripts, Inc., a Delaware Corporation
Together with its affiliated entity**

**Medco Containment Life Insurance Company
("Express Scripts" or "Contractor")**

Contract for Medicare Part D Employer Group Waiver Plan ("EGWP") Services
for State of Connecticut Teachers' Retirement Board

January 1, 2018

Contract Award Date

Contract # **2017-26337**

Contract Document

SP-50 Rev. 6/15/16

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Contract # 2017-26337

Contract Document

SP-50 Rev. 6/15/16

This contract (the "Contract") is made as of the first day of January, by and between, Express Scripts, Inc., a Delaware corporation, together with its affiliated entity Medco Containment Life Insurance Company (the "Contractor,") with a principal place of business at One Express Way, St. Louis, Missouri 63121, and the State of Connecticut, Teachers' Retirement Board (the "Agency"), with a principal place of business at 765 Asylum Ave., Hartford, Connecticut 06105, acting by Ms. Darlene Perez, its Administrator, in accordance with Section 10-1831 of the Connecticut General Statutes or, if applicable, State of Connecticut General Letter 71.

Now therefore, in consideration of these presents, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the Contractor and the State agree as follows:

1. Definitions. Unless otherwise indicated, the following terms shall have the following corresponding definitions:
 - (a) Bid: A Bid submitted in response to a Solicitation
 - (b) Claims: All actions, suits, claims, demands, investigations and proceedings of any kind, open, pending or threatened, whether mature, unmatured, contingent, known or unknown, at law or in equity, in any forum.
 - (c) Confidential Information: This shall mean any name, number or other information that may be used, alone or in conjunction with any other information, to identify a specific individual including, but not limited to, such individual's name, date of birth, mother's maiden name, motor vehicle operator's license number, Social Security number, employee identification number, employer or taxpayer identification number, alien registration number, government passport number, health insurance identification number, demand deposit account number, savings account number, credit card number, debit card number or unique biometric data such as fingerprint, voice print, retina or iris image, or other unique physical representation. Without limiting the foregoing, Confidential Information shall also include any information that the Agency classifies as "confidential" or "restricted." Confidential Information shall not include information that may be lawfully obtained from publicly available sources or from federal, state, or local government records which are lawfully made available to the general public.
 - (d) Confidential Information Breach: This shall mean, generally, an instance where an unauthorized person or entity accesses Confidential Information in any manner, including but not limited to the following occurrences: (1) any Confidential Information that is not encrypted or protected is misplaced, lost, stolen or in any way compromised; (2) one or more third parties have had access to or taken control or possession of any Confidential Information that is not encrypted or protected without prior written authorization from the State; (3) the unauthorized acquisition of encrypted or protected Confidential Information together with the confidential process or key that is capable of compromising the integrity of the Confidential Information; or (4) if there is a substantial risk of identity theft or fraud to the Agency, the Contractor, or the State.
 - (e) Contract: The agreement, as of its Effective Date, between the Contractor and the State for any or all Goods or Services at the Bid price.
 - (f) Contractor: A person or entity who submits a Bid and who executes a Contract.
 - (g) Contractor Parties: A Contractor's members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees or any one of them or

any other person or entity with whom the Contractor is in privity of oral or written contract and the Contractor intends for such other person or entity to Perform under the Contract in any capacity.

- (h) Day: All calendar days other than Saturdays, Sundays and days designated as national or State of Connecticut holidays upon which banks in Connecticut are closed.
 - (i) Force Majeure: Events that materially affect the cost of the Goods or Services or the time schedule within which to Perform and are outside the control of the party asserting that such an event has occurred, including, but not limited to, labor troubles unrelated to the Contractor, failure of or inadequate permanent power, unavoidable casualties, fire not caused by the Contractor, extraordinary weather conditions, disasters, riots, acts of God, insurrection or war.
 - (j) Goods: For purposes of the Contract, all things which are movable at the time that the Contract is effective and which include, without limiting this definition, supplies, materials and equipment, as specified in the Solicitation and set forth in the Appendix and Exhibits.
 - (k) Goods or Services: Goods, Services or both, as specified in the Solicitation and set forth in the Appendix and Exhibits.
 - (l) Records: All working papers and such other information and materials as may have been accumulated by the Contractor in performing the Contract, including but not limited to, documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries and correspondence, kept or stored in any form.
 - (m) Services: The performance of labor or work, as specified in the Solicitation and set forth in the Appendix and Exhibits.
 - (n) Solicitation: A State request, in whatever form issued, inviting bids, proposals or quotes for Goods or Services, typified by, but not limited to, an invitation to bid, request for proposals, request for information or request for quotes. The Solicitation and this Contract shall be governed by the statutes, regulations and procedures of the State of Connecticut, Department of Administrative Services, even if the Agency has statutes, regulations and procedures which overlap DAS's. However, to the extent that the Agency has statutes, regulations or procedures which the Agency determines in its sole discretion to be inconsistent with DAS's, the Agency's shall control over those of DAS's. The Solicitation is incorporated into and made a part of the Contract as if it had been fully set forth in it if, but only if, the Solicitation is in the form of an invitation to bid, request for information or request for quotes. A Solicitation in the form of a request for proposals is not incorporated into the Contract in its entirety, but, rather, it is incorporated into the Contract only to the extent specifically stated in the Appendix and Exhibits.
 - (o) State: The State of Connecticut, including the Agency and any office, department, board, council, commission, institution or other agency of the State.
 - (p) Termination: An end to the Contract prior to the end of its term whether effected pursuant to a right which the Contract creates or for a breach.
 - (q) Title: all ownership, title, licenses, rights and interest, including, but not limited to, perpetual use, of and to the Goods or Services.
2. Contracting Vehicle. The Solicitation may involve an invitation to bid, request for proposals, request for information or request for quotes, each of which may be governed by different statutory, regulatory and administrative procedures. **ALTHOUGH THIS CONTRACT USES THE TERMS "SOLICITATION" AND "BID" IT'S USE OF THOSE TERMS IS INTENDED ONLY FOR PURPOSES OF**

CONVENIENCE AND SHALL NOT BE DEEMED TO BE A CONTROLLING STATEMENT AS TO THE TYPE OF SOLICITATION USED OR THE RESPECTIVE RIGHTS AND OBLIGATIONS OF THE PARTIES. THE IDENTIFICATION IN THE SOLICITATION OF THE PARTICULAR PROCUREMENT VEHICLE THE STATE IS USING TO SOLICIT GOODS OR SERVICES SHALL CONTROL. Therefore, if the Solicitation identifies the procurement vehicle as something other than an Invitation to Bid, the terms "Solicitation" and "Bid," as used in this Contract shall be read to mean "Request for Proposals," "Proposal" and "Proposer" or to mean such other terms as are consistent with the Solicitation in order to preserve the integrity of the statutory, regulatory and procedural distinctions among the various procurement vehicles and their corresponding principles.

3. Term of Contract; Contract Extension. The Contract will be in effect from January 1, 2018 through December 31, 2020. The parties, by mutual agreement, may extend this Contract for additional terms beyond the original term, prior to Termination or expiration, one or more times for a combined total period not to exceed the complete length of the original term, but only in accordance with the section in this Contract concerning Contract Amendments.
4. Description of Goods or Services and Additional Terms and Conditions. The Contractor shall perform as set forth in Exhibit A. For purposes of this Contract, to perform and the performance in Exhibit A is referred to as "Perform" and the "Performance."
5. Price Schedule, Payment Terms and Billing.
 - (a) Payment terms under this Contract are set forth in Exhibit B.
 - (b) The State shall make all payments to the Contractor through electronic funds transfer via the Automated Clearing House ("ACH") or through the State of Connecticut Purchasing Card (MasterCard) in accordance with Memorandum No. 2011-11 issued by the Office of the State Comptroller.
 - (c) Contractor shall enroll in ACH through the Office of the State Comptroller prior to sending any invoice to the State. The Contractor may obtain detailed information regarding ACH at: <http://www.osc.ct.gov/vendor/directdeposit.html>.
 - (d) Contractor shall be equipped to receive orders issued by the Client Agency using the MasterCard. The Contractor shall be responsible for the credit card user-handling fee associated with MasterCard purchases. The Contractor shall charge to the MasterCard only upon acceptance of Goods delivered to the Client Agency or the rendering of Services.
 - (e) The Contractor shall capture and provide to its merchant bank, Level 3 reporting at the line item level for all orders placed by MasterCard.
 - (f) Questions regarding the state of Connecticut MasterCard Program may be directed to Ms. Kerry DiMatteo, Procurement Card Program Administrator at 860-713-5072.
 - (g) Notwithstanding any language regarding Contractor price increases herein, the Price Schedule will be adjusted to reflect any increase in the minimum wage rate that may occur during the term of this Contract as mandated by State law and in accordance with the terms of this section. Contractor shall provide documentation, in the form of certified payroll or other documentation acceptable to the State, substantiating the amount of any increase in Contractor labor costs as a result of changes to the minimum wage rate within ninety (90) days of the statutorily identified effective date of any increase in the minimum wage. Upon receipt, and verification of Contractor documentation DAS shall adjust the Price Schedule accordingly through a supplement to this Contract.

(h) Price Adjustments: No price increases are allowed under this Contract.

6. Rejected Items; Abandonment.

(a) The Contractor may deliver, cause to be delivered, or, in any other way, bring or cause to be brought, to any State premises or other destination, Goods, as samples or otherwise, and other supplies, materials, equipment or other tangible personal property. The State may, by written notice and in accordance with the terms and conditions of the Contract, direct the Contractor to remove any or all such Goods ("the "Rejected Goods") and any or all other supplies, materials, equipment or other tangible personal property (collectively, the "Contractor Property") from and out of State premises and any other location which the Agency or State manages, leases or controls. The Contractor shall remove the Rejected Goods and the Contractor Property in accordance with the terms and conditions of the written notice. Failure to remove the Rejected Goods or the Contractor Property in accordance with the terms and conditions of the written notice shall mean, for itself and all Contractor Parties, that:

- (1) they have voluntarily, intentionally, unconditionally, unequivocally and absolutely abandoned and left unclaimed the Rejected Goods and Contractor Property and relinquished all ownership, title, licenses, rights, possession and interest of, in and to (collectively, "Title") the Rejected Goods and Contractor Property with the specific and express intent of (A) terminating all of their Title to the Rejected Goods and Contractor Property, (B) vesting Title to the Rejected Goods and Contractor Property in the State of Connecticut and (C) not ever reclaiming Title or any future rights of any type in and to the Rejected Goods and Contractor Property;
- (2) there is no ignorance, inadvertence or unawareness to mitigate against the intent to abandon the Rejected Goods or Contractor Property;
- (3) they vest authority, without any further act required on their part or the Agency's part, in the Agency and the State to use or dispose of the Rejected Goods and Contractor Property, in the Agency's sole discretion, as if the Rejected Goods and Contractor Property were the Agency's or State's own property and in accordance with law, without incurring any liability or obligation to the Contractor or any other party;
- (4) if the Agency or State incur any costs or expenses in connection with disposing of the Rejected Goods and Contractor Property, including, but not limited to, advertising, moving or storing the Rejected Goods and Contractor Property, auction and other activities, the Agency shall invoice the Contractor for all such cost and expenses and the Contractor shall reimburse the State no later than thirty (30) days after the date of invoice; and
- (5) they do remise, release and forever discharge the Agency and all State employees, departments, commissions, boards, bureaus, agencies, instrumentalities or political subdivisions and their respective successors, heirs, executors and assigns (collectively, the "State and Its Agents") of and from all Claims which they and their respective successors or assigns, jointly or severally, ever had, now have or will have against the Agency and the State and Its Agents arising from the use or disposition of the Rejected Goods and Contractor Property.

(b) The Contractor shall secure from each Contractor Party, as appropriate, such document or instrument as necessary or appropriate as will vest in the Contractor plenary authority to bind the Contractor Parties to the full extent necessary or appropriate to give full effect to all of the terms and conditions of this section. The Contractor shall provide, no later than fifteen (15) days after

receiving a request from the Agency, such information as the Agency may require to evidence, in the Agency's sole determination, compliance with this section.

7. Order and Delivery. The Contract shall bind the Contractor to furnish and deliver the Goods or Services in accordance with Exhibit A and at the prices set forth in Exhibit B. Subject to the sections in this Contract concerning Force Majeure, Termination and Open Market Purchases, the Contract shall bind the Agency to order the Goods or Services from the Contractor, and to pay for the accepted Goods or Services in accordance with Exhibit B.
8. Contract Amendments. No amendment to or modification or other alteration of the Contract shall be valid or binding upon the State unless made in writing, signed by both parties and, if applicable, approved by the Connecticut Attorney General.
9. Assignment. The Contractor shall not assign any of its rights or obligations under the Contract, voluntarily or otherwise, in any manner without the prior written consent of the Agency. The Agency may void any purported assignment in violation of this section and declare the Contractor in breach of Contract. Any Termination by the Agency for a breach is without prejudice to the Agency's or the State's rights or possible Claims.
10. Termination.
 - (a) Notwithstanding any provisions in this Contract, the Agency, through a duly authorized employee, may Terminate the Contract whenever the Agency makes a written determination that such Termination is in the best interests of the State. The Agency shall notify the Contractor in writing of Termination pursuant to this section, which notice shall specify the effective date of Termination and the extent to which the Contractor must complete its Performance under the Contract prior to such date.
 - (b) Notwithstanding any provisions in this Contract, the Agency, through a duly authorized employee, may, after making a written determination that the Contractor has breached the Contract, Terminate the Contract in accordance with the provisions in the Breach section of this Contract.
 - (c) The Agency shall send the notice of Termination via certified mail, return receipt requested, to the Contractor at the most current address which the Contractor has furnished to the Agency for purposes of correspondence, or by hand delivery. Upon receiving the notice from the Agency, the Contractor shall immediately discontinue all services affected in accordance with the notice, undertake all commercially reasonable efforts to mitigate any losses or damages, and deliver to the Agency all Records. The Records are deemed to be the property of the Agency and the Contractor shall deliver them to the Agency no later than thirty (30) days after the Termination of the Contract or fifteen (15) days after the Contractor receives a written request from the Agency for the Records. The Contractor shall deliver those Records that exist in electronic, magnetic or other intangible form in a non-proprietary format, such as, but not limited to, ASCII or .TXT.
 - (d) Upon receipt of a written notice of Termination from the Agency, the Contractor shall cease operations as the Agency directs in the notice, and take all actions that are necessary or appropriate, or that the Agency may reasonably direct, for the protection, and preservation of the Goods and any other property. Except for any work which the Agency directs the Contractor to Perform in the notice prior to the effective date of Termination, and except as otherwise provided in the notice, the Contractor shall terminate or conclude all existing subcontracts and purchase orders and shall not enter into any further subcontracts, purchase orders or commitments.
 - (e) The Agency shall, within forty-five (45) days of the effective date of Termination, reimburse the Contractor for its Performance rendered and accepted by the Agency in accordance with Exhibit A,

in addition to all actual and reasonable costs incurred after Termination in completing those portions of the Performance which the notice required the Contractor to complete. However, the Contractor is not entitled to receive and the Agency is not obligated to tender to the Contractor any payments for anticipated or lost profits. Upon request by the Agency, the Contractor shall assign to the Agency, or any replacement contractor which the Agency designates, all subcontracts, purchase orders and other commitments, deliver to the Agency all Records and other information pertaining to its Performance, and remove from State premises, whether leased or owned, all of Contractor's property, equipment, waste material and rubbish related to its Performance, all as the Agency may request.

- (f) For breach or violation of any of the provisions in the section concerning Representations and Warranties, the Agency may Terminate the Contract in accordance with its terms and revoke any consents to assignments given as if the assignments had never been requested or consented to, without liability to the Contractor or Contractor Parties or any third party.
 - (g) Upon Termination of the Contract, all rights and obligations shall be null and void, so that no party shall have any further rights or obligations to any other party, except with respect to the sections which survive Termination. All representations, warranties, agreements and rights of the parties under the Contract shall survive such Termination to the extent not otherwise limited in the Contract and without each one of them having to be specifically mentioned in the Contract.
 - (h) Termination of the Contract pursuant to this section shall not be deemed to be a breach of contract by the Agency.
11. **Cost Modifications.** The parties may agree to a reduction in the cost of the Contract at any time during which the Contract is in effect. Without intending to impose a limitation on the nature of the reduction, the reduction may be to hourly, staffing or unit costs, the total cost of the Contract or the reduction may take such other form as the State deems to be necessary or appropriate.
12. **Breach.** If either party breaches the Contract in any respect, the non-breaching party shall provide written notice of such breach to the breaching party and afford the breaching party an opportunity to cure the breach within ten (10) days from the date that the breaching party receives such notice. Any other time provided for in the notice shall trump such ten (10) days. Such right to cure period shall be extended if the non-breaching party is satisfied that the breaching party is making a good faith effort to cure but the nature of the breach is such that it cannot be cured within the right to cure period. The notice may include an effective Contract Termination date if the breach is not cured by the stated date and, unless otherwise modified by the non-breaching party in writing prior to the Termination date, no further action shall be required of any party to effect the Termination as of the stated date. If the notice does not set forth an effective Contract Termination date, then the non-breaching party may Terminate the Contract by giving the breaching party no less than twenty four (24) hours' prior written notice. If the Agency believes that the Contractor has not performed according to the Contract, the Agency may withhold payment in whole or in part pending resolution of the Performance issue, provided that the Agency notifies the Contractor in writing prior to the date that the payment would have been due in accordance with Exhibit B.
13. **Waiver.**
- (a) No waiver of any breach of the Contract shall be interpreted or deemed to be a waiver of any other or subsequent breach. All remedies afforded in the Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided in the Contract or at law or in equity.

- (b) A party's failure to insist on strict performance of any provision of the Contract shall only be deemed to be a waiver of rights and remedies concerning that specific instance of Performance and shall not be deemed to be a waiver of any subsequent rights, remedies or breach.

14. Open Market Purchases. Failure of the Contractor to Perform within the time specified in the Contract, or failure to replace rejected or substandard Goods or fulfill unperformed Services when so requested and as the Contract provides or allows, constitutes a breach of the Contract and as a remedy for such breach, such failure shall constitute authority for the Agency, if it deems it to be necessary or appropriate in its sole discretion, to Terminate the Contract and/or to purchase on the open market, Goods or Services to replace those which have been rejected, not delivered, or not Performed. The Agency shall invoice the Contractor for all such purchases to the extent that they exceed the costs and expenses in Exhibit B and the Contractor shall pay the Agency's invoice immediately after receiving the invoice. If the Agency does not Terminate the Contract, the Agency will deduct such open market purchases from the Contract quantities. However, if the Agency deems it to be in the best interest of the State, the Agency may accept and use the Goods or Services delivered which are substandard in quality, subject to an adjustment in price to be determined by the Agency.

15. Purchase Orders.

- (a) The Contract itself is not an authorization for the Contractor to ship Goods or begin Performance in any way. The Contractor may begin Performance only after it has received a duly issued purchase order against the Contract for Performance.
- (b) The Agency shall issue a purchase order against the Contract directly to the Contractor and to no other party.
- (c) All purchase orders shall be in written or electronic form, bear the Contract number (if any) and comply with all other State and Agency requirements, particularly the Agency's requirements concerning procurement. Purchase orders issued in compliance with such requirements shall be deemed to be duly issued.
- (d) A Contractor making delivery without a duly issued purchase order in accordance with this section does so at the Contractor's own risk.
- (e) The Agency may, in its sole discretion, deliver to the Contractor any or all duly issued purchase orders via electronic means only, such that the Agency shall not have any additional obligation to deliver to the Contractor a "hard copy" of the purchase order or a copy bearing any hand-written signature or other "original" marking.

16. Indemnification.

- (a) The Contractor shall indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with the Contract, including the acts of commission or omission (collectively, the "Acts") of the Contractor or Contractor Parties; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts or the Contract. The Contractor shall use counsel reasonably acceptable to the State in carrying out its obligations under this section. The Contractor's obligations under this section to indemnify, defend and hold harmless against Claims includes Claims concerning confidentiality of any part of or all of the Contractor's bid, proposal or any Records, any intellectual property rights, other proprietary rights of any person or entity,

copyrighted or uncopyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the Performance.

- (b) The Contractor shall not be responsible for indemnifying or holding the State harmless from any liability arising due to the negligence of the State or any other person or entity acting under the direct control or supervision of the State.
- (c) The Contractor shall reimburse the State for any and all damages to the real or personal property of the State caused by the Acts of the Contractor or any Contractor Parties. The State shall give the Contractor reasonable notice of any such Claims.
- (d) The Contractor's duties under this section shall remain fully in effect and binding in accordance with the terms and conditions of the Contract, without being lessened or compromised in any way, even where the Contractor is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims and/or where the State is alleged or is found to have contributed to the Acts giving rise to the Claims.
- (e) The Contractor shall carry and maintain at all times during the term of the Contract, and during the time that any provisions survive the term of the Contract, sufficient general liability insurance to satisfy its obligations under this Contract. The Contractor shall cause the State to be named as an additional insured on the policy and shall provide (1) a certificate of insurance, (2) the declaration page and (3) the additional insured endorsement to the policy to DAS and the Client Agency all in an electronic format acceptable to DAS prior to the Effective Date of the Contract evidencing that the State is an additional insured. The Contractor shall not begin Performance until the delivery of these 3 documents to the Client Agency. Contractor shall provide an annual electronic update of the 3 documents to the Client Agency and DAS on or before each anniversary of the Effective Date during the Contract term. State shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that State is contributorily negligent.
- (f) This section shall survive the Termination of the Contract and shall not be limited by reason of any insurance coverage.

17. Forum and Choice of Law. The parties deem the Contract to have been made in the City of Hartford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of the Contract to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Contractor waives any objection which it may now have or will have to the laying of venue of any Claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.

18. Contractor Guaranties. Contractor shall:

- (a) Perform fully under the Contract;
- (b) Guarantee the Goods or Services against defective material or workmanship and to repair any damage or marring occasioned in transit or, at the Agency's option, replace them;

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- (c) Furnish adequate protection from damage for all work and to repair damage of any kind, for which its workers are responsible, to the premises, Goods, the Contractor's work or that of Contractor Parties;
 - (d) With respect to the provision of Services, pay for all permits, licenses and fees and give all required or appropriate notices;
 - (e) Adhere to all Contractual provisions ensuring the confidentiality of Records that the Contractor has access to and are exempt from disclosure under the State's Freedom of Information Act or other applicable law; and
 - (f) Neither disclaim, exclude nor modify the implied warranties of fitness for a particular purpose or of merchantability.
19. Implied Warranties. The Agency does not disclaim, exclude or modify the implied warranty of fitness for a particular purpose or the warranty of merchantability.
20. Goods, Standards and Appurtenances. Any Goods delivered must be standard new Goods, latest model, except as otherwise specifically stated in the Contract. Remanufactured, refurbished or reconditioned equipment may be accepted but only to the extent allowed under the Contract. Where the Contract does not specifically list or describe any parts or nominal appurtenances of equipment for the Goods, it shall be understood that the Contractor shall deliver such equipment and appurtenances as are usually provided with the manufacturer's stock model.
21. Delivery.
- (a) Delivery shall be made as ordered and in accordance with the Contract. Unless otherwise specified in the Contract, delivery shall be to a loading dock or receiving platform. The Contractor or Contractor's shipping designee shall be responsible for removal of Goods from the carrier and placement on the Agency loading dock or receiving platform. The receiving personnel of the Agency are not required to assist in this process. The decision of the Agency as to reasonable compliance with delivery terms shall be final and binding. The burden of proof of proper receipt of the order shall rest with the Contractor.
 - (b) In order for the time of delivery to be extended, the Agency must first approve a request for extension from the time specified in the Contract, such extension applying only to the particular item or shipment.
 - (c) Goods shall be securely and properly packed for shipment, according to accepted standard commercial practice, without extra charge for packing cases, baling or sacks. The containers shall remain the property of the Agency unless otherwise stated in the Contract.
 - (d) All risk of loss and damage to the Goods transfers to the Agency upon Title vesting in the Agency.
22. Goods Inspection. The Agency shall determine the manner and prescribe the inspection of all Goods and the tests of all samples submitted to determine whether they comply with all of the specifications in the Contract. If any Goods fail in any way to meet the specifications in the Contract, the Agency may, in its sole discretion, either reject it and owe nothing or accept it and pay for it on an adjusted price basis, depending on the degree to which the Goods meet the specifications. Any decision pertaining to any such failure or rejection shall be final and binding.
23. Emergency Standby for Goods and/or Services. If any Federal or State official, having authority to do so, declares an emergency or the occurrence of a natural disaster within the State of

Connecticut, the Agency may request the Goods and Services on an expedited and prioritized basis. Upon receipt of such a request the Contractor shall make all necessary and appropriate commercially reasonable efforts to reallocate its staffing and other resources in order to give primary preference to Performing this Contract ahead of or prior to fulfilling, in whole or in part, any other contractual obligations that the Contractor may have. The Contractor is not obligated to make those efforts to Perform on an expedited and prioritized basis in accordance with this paragraph if doing so will make the Contractor materially breach any other contractual obligations that the Contractor may have. Contractor shall acknowledge receipt of any request made pursuant to this paragraph within 2 hours from the time that the Contractor receives it via purchase order or through a request to make an expedited or prioritized purchase through the State of Connecticut Purchasing Card (MasterCard) Program (the "P-Card Program"). If the Contractor fails to acknowledge receipt within 2 hours, confirm its obligation to Perform or actually Perform, as set forth in the purchase order or through the P-Card Program, then the Agency may procure the Performance from another source without further notice to Contractor and without creating any right of recourse at law or in equity against the Agency.

24. Setoff. In addition to all other remedies available hereunder, the State, in its sole discretion, may setoff (1) any costs or expenses that the State incurs resulting from the Contractor's unexcused nonperformance under the Contract and under any other agreement or arrangement that the Contractor has with the State and (2) any other amounts that are due or may become due from the State to the Contractor, against amounts otherwise due or that may become due to the Contractor under the Contract, or under any other agreement or arrangement that the Contractor has with the State. The State's right of setoff shall not be deemed to be the State's exclusive remedy for the Contractor's or Contractor Parties' breach of the Contract, all of which shall survive any setoffs by the State.
25. Force Majeure. The Agency and the Contractor shall not be excused from their obligation to Perform in accordance with the Contract except in the case of Force Majeure events and as otherwise provided for in the Contract. In the case of any such exception, the nonperforming party shall give immediate written notice to the other, explaining the cause and probable duration of any such nonperformance.
26. Advertising. The Contractor shall not refer to sales to the State for advertising or promotional purposes, including, but not limited to, posting any material or data on the Internet, without the Agency's prior written approval.
27. Americans With Disabilities Act. The Contractor shall be and remain in compliance with the Americans with Disabilities Act of 1990 ("Act"), to the extent applicable, during the term of the Contract. The Agency may Terminate the Contract if the Contractor fails to comply with the Act.
28. Representations and Warranties. The Contractor, represents and warrants to Agency for itself and Contractor Parties, that:
 - (a) if they are entities, they are duly and validly existing under the laws of their respective states of organization and authorized to conduct business in the State of Connecticut in the manner contemplated by the Contract. Further, as appropriate, they have taken all necessary action to authorize the execution, delivery and Performance of the Contract and have the power and authority to execute, deliver and Perform their obligations under the Contract;
 - (b) they will comply with all applicable State and Federal laws and municipal ordinances in satisfying their obligations to the Agency under and pursuant to the Contract, including, but not limited to (1) Connecticut General Statutes Title 1, Chapter 10, concerning the State's Codes of Ethics and (2) Title

4a concerning State purchasing, including, but not limited to Section 22a-194a concerning the use of polystyrene foam;

- (c) the execution, delivery and Performance of the Contract will not violate, be in conflict with, result in a breach of or constitute (with or without due notice and/or lapse of time) a default under any of the following, as applicable: (1) any provision of law; (2) any order of any court or the State; or (3) any indenture, agreement, document or other instrument to which it is a party or by which it may be bound;
- (d) they are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any governmental entity;
- (e) as applicable, they have not, within the three years preceding the Contract, in any of their current or former jobs, been convicted of, or had a civil judgment rendered against them or against any person who would Perform under the Contract, for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a transaction or contract with any governmental entity. This includes, but is not limited to, violation of Federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (f) they are not presently indicted for or otherwise criminally or civilly charged by any governmental entity with commission of any of the offenses listed above;
- (g) they have not within the three years preceding the Contract had one or more contracts with any governmental entity Terminated;
- (h) they have not employed or retained any entity or person, other than a bona fide employee working solely for them, to solicit or secure the Contract and that they have not paid or agreed to pay any entity or person, other than a bona fide employee working solely for them, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of the Contract or any assignments made in accordance with the terms of the Contract;
- (i) to the best of their knowledge, there are no Claims involving the Contractor or Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract;
- (j) they shall disclose, to the best of their knowledge, to the Agency in writing any Claims involving them that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract, no later than ten (10) Days after becoming aware or after they should have become aware of any such Claims. For purposes of the Contractor's obligation to disclose any Claims to the Agency, the ten (10) Days in the section of this Contract concerning Disclosure of Contractor Parties Litigation shall run consecutively with the ten (10) Days provided for in this representation and warranty;
- (k) their participation in the Solicitation process is not a conflict of interest or a breach of ethics under the provisions of Title 1, Chapter 10 of the Connecticut General Statutes concerning the State's Code of Ethics;
- (l) the Bid was not made in connection or concert with any other person or entity, including any affiliate (as defined in the Tangible Personal Property section of this Contract) of the Contractor,

submitting a bid for the same Goods or Services, and is in all respects fair and without collusion or fraud;

- (m) they are able to Perform under the Contract using their own resources or the resources of a party who is not a Contractor;
- (n) the Contractor shall obtain in a written contract all of the representations and warranties in this section from any Contractor Parties and to require that provision to be included in any contracts and purchase orders with Contractor Parties;
- (o) they have paid all applicable workers' compensation second injury fund assessments concerning all previous work done in Connecticut;
- (p) they have a record of compliance with Occupational Health and Safety Administration regulations without any unabated, willful or serious violations;
- (q) they owe no unemployment compensation contributions;
- (r) they are not delinquent in the payment of any taxes owed, or, that they have filed a sales tax security bond, and they have, if and as applicable, filed for motor carrier road tax stickers and have paid all outstanding road taxes;
- (s) all of their vehicles have current registrations and, unless such vehicles are no longer in service, they shall not allow any such registrations to lapse;
- (t) each Contractor Party has vested in the Contractor plenary authority to bind the Contractor Parties to the full extent necessary or appropriate to ensure full compliance with and Performance in accordance with all of the terms and conditions of the Contract and that all appropriate parties shall also provide, no later than fifteen (15) days after receiving a request from the Agency, such information as the Agency may require to evidence, in the Agency's sole determination, compliance with this section;
- (u) except to the extent modified or abrogated in the Contract, all Title shall pass to the Agency upon complete installation, testing and acceptance of the Goods or Services and payment by the Agency;
- (v) if either party Terminates the Contract, for any reason, they shall relinquish to the Agency all Title to the Goods delivered, accepted and paid for (except to the extent any invoiced amount is disputed) by the Agency;
- (w) with regard to third party products provided with the Goods, they shall transfer all licenses which they are permitted to transfer in accordance with the applicable third party license;
- (x) they shall not copyright, register, distribute or claim any rights in or to the Goods after the Effective Date of the Contract without the Agency's prior written consent;
- (y) they either own or have the authority to use all Title of and to the Goods, and that such Title is not the subject of any encumbrances, liens or claims of ownership by any third party;
- (z) the Goods do not infringe or misappropriate any patent, trade secret or other intellectual property right of a third party;
- (aa) the Agency's use of any Goods shall not infringe or misappropriate any patent, trade secret or other intellectual property right of a third party;

(bb) if they procure any Goods, they shall sub-license such Goods and that the Agency shall be afforded the full benefits of any manufacturer or subcontractor licenses for the use of the Goods; and

(cc) they shall assign or otherwise transfer to the Agency, or afford the Agency the full benefits of any manufacturer's warranty for the Goods, to the extent that such warranties are assignable or otherwise transferable to the Agency.

29. Representations and Warranties Concerning Motor Vehicles. If in the course of Performance or in any other way related to the Contract the Contractor at any time uses or operates "motor vehicles," as that term is defined by Conn. Gen. Stat. §14-1 (including, but not limited to such services as snow plowing, sanding, hauling or delivery of materials, freight or merchandise, or the transportation of passengers), the Contractor, represents and warrants for itself and the Contractor Parties, that:

(a) It is the owner of record or lessee of record of each such motor vehicle used in the Performance of the Contract, and each such motor vehicle is duly registered with the Connecticut Department of Motor Vehicles ("ConnDMV") in accordance with the provisions of Chapter 246 of the Connecticut General Statutes. Each such registration shall be in valid status, and shall not be expired, suspended or revoked by ConnDMV, for any reason or cause. If such motor vehicle is not registered with ConnDMV, then it shall be duly registered with another state or commonwealth in accordance with such other state's or commonwealth's applicable statutes. Each such registration shall be in valid status, and shall not be expired, suspended or revoked by such other state or commonwealth for any reason or cause.

(b) Each such motor vehicle shall be fully insured in accordance with the provisions of Sections 14-12b, 14-112 and 38a-371 of the Connecticut General Statutes, as amended, in the amounts required by the said sections or in such higher amounts as have been specified by ConnDMV as a condition for the award of the Contract, or in accordance with all substantially similar provisions imposed by the law of the jurisdiction where the motor vehicle is registered.

(c) Each Contractor Party who uses or operates a motor vehicle at any time in the Performance of the Contract shall have and maintain a motor vehicle operator's license or commercial driver's license of the appropriate class for the motor vehicle being used or operated. Each such license shall bear the endorsement or endorsements required by the provisions of Section 14-36a of the Connecticut General Statutes, as amended, to operate such motor vehicle, or required by substantially similar provisions imposed by the law of another jurisdiction in which the operator is licensed to operate such motor vehicle. The license shall be in valid status, and shall not be expired, suspended or revoked by ConnDMV or such other jurisdiction for any reason or cause.

(d) Each motor vehicle shall be in full compliance with all of the terms and conditions of all provisions of the Connecticut General Statutes and regulations, or those of the jurisdiction where the motor vehicle is registered, pertaining to the mechanical condition, equipment, marking and operation of motor vehicles of such type, class and weight, including, but not limited to, requirements for intrastate carriers with motor vehicles having a gross vehicle weight rating or gross combination weight rating or gross vehicle weight or gross combination weight of 18,001 pounds or more or interstate carriers with motor vehicles having a gross vehicle weight

rating or gross combination weight rating or gross vehicle weight or gross combination weight of 10,001 pounds or more otherwise described by the provisions of Conn. Gen. Stat. § 14-163c(a) and all applicable provisions of the Federal Motor Carrier Safety Regulations, as set forth in Title 49, Parts 382 to 399, inclusive, of the Code of Federal Regulations. If the Contractor is a "motor carrier," as that term is defined in section 49 CFR Part 390, and the Contractor is subject to an order issued by the Federal Motor Carrier Safety Administration that prohibits such Contractor from operating or allowing the operation of a motor vehicle, then the Contractor shall comply fully with such order. In addition, if a motor vehicle or its operator is declared out of service pursuant to Conn. Gen. Stat. § 14-163c(d)(4), then the Contractor shall not operate or allow the operation of that motor vehicle and shall not allow the operator to operate a motor vehicle while the respective subject out-of-service order is in effect.

30. Disclosure of Contractor Parties Litigation. The Contractor shall require that all Contractor Parties, as appropriate, disclose to the Contractor, to the best of their knowledge, any Claims involving the Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract, no later than ten (10) Days after becoming aware or after they should have become aware of any such Claims. Disclosure shall be in writing.
31. Entirety of Contract. The Contract is the entire agreement between the parties with respect to its subject matter, and supersedes all prior agreements, proposals, offers, counteroffers and understandings of the parties, whether written or oral. The Contract has been entered into after full investigation, neither party relying upon any statement or representation by the other unless such statement or representation is specifically embodied in the Contract.
32. Exhibits. All exhibits referred to in and attached to this Contract are incorporated in this Contract by such reference and shall be deemed to be a part of it as if they had been fully set forth in it.
33. Executive Orders. This Contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of the Contract as if they had been fully set forth in it. The Contract may also be subject to Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services and to Executive Order No. 49 of Governor Dannel P. Malloy, promulgated May 22, 2015, mandating disclosure of certain gifts to public employees and contributions to certain candidates for office. If Executive Order 14 and/or Executive Order 49 are applicable, they are deemed to be incorporated into and are made a part of the Contract as if they had been fully set forth in it. At the Contractor's request, the Client Agency or DAS shall provide a copy of these orders to the Contractor.
34. Non-discrimination.

(a) For purposes of this Section, the following terms are defined as follows:

- (1) "Commission" means the Commission on Human Rights and Opportunities;
- (2) "Contract" and "contract" include any extension or modification of the Contract or contract;

(3) "Contractor" and "contractor" include any successors or assigns of the Contractor or contractor;

(4) "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose.

(5) "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;

(6) "good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements;

(7) "marital status" means being single, married as recognized by the state of Connecticut, widowed, separated or divorced;

(8) "mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders;

(9) "minority business enterprise" means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of Connecticut General Statutes § 32-9n; and

(10) "public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

For purposes of this Section, the terms "Contract" and "contract" do not include a contract where each contractor is (1) a political subdivision of the state, including, but not limited to, a municipality, (2) a quasi-public agency, as defined in Conn. Gen. Stat. Section 1-120, (3) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in Conn. Gen. Stat. Section 1-267, (4) the federal government, (5) a foreign government, or (6) an agency of a subdivision, agency, state or government described in the immediately preceding enumerated items (1), (2), (3), (4) or (5).

(b)

- (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and the Contractor further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Contractor that such disability prevents performance of the work involved; (2) the Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the Commission; (3) the Contractor agrees to provide each labor union or representative of workers with which the Contractor has a collective bargaining agreement or other contract or understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission, advising the labor union or workers' representative of the Contractor's commitments under this section and to post copies of the notice in conspicuous places available to employees and applicants for employment; (4) the Contractor agrees to comply with each provision of this Section and Connecticut General Statutes §§ 46a-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes §§ 46a-56, 46a-68e and 46a-68f; and (5) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor as relate to the provisions of this Section and Connecticut General Statutes § 46a-56. If the contract is a public works contract, the Contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works projects.
- (c) Determination of the Contractor's good faith efforts shall include, but shall not be limited to, the following factors: The Contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.
- (d) The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.
- (e) The Contractor shall include the provisions of subsection (b) of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes §46a-56; provided if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the

Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

- (f) The Contractor agrees to comply with the regulations referred to in this Section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.

(g)

(1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation; (2) the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining agreement or other contract or understanding and each vendor with which such Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; (3) the Contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes § 46a-56; and (4) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor which relate to the provisions of this Section and Connecticut General Statutes § 46a-56.

- (h) The Contractor shall include the provisions of the foregoing paragraph in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes § 46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

35. Tangible Personal Property.

- (a) The Contractor on its behalf and on behalf of its Affiliates, as defined below, shall comply with the provisions of Conn. Gen. Stat. §12-411b, as follows:

(1) For the term of the Contract, the Contractor and its Affiliates shall collect and remit to the State of Connecticut, Department of Revenue Services, any Connecticut use tax due under the provisions of Chapter 219 of the Connecticut General Statutes for items of tangible personal property sold by the Contractor or by any of its Affiliates in the same manner as if the Contractor and such Affiliates were engaged in the business of selling tangible personal property for use in Connecticut and had sufficient nexus under the provisions of Chapter 219 to be required to collect Connecticut use tax;

- (2) A customer's payment of a use tax to the Contractor or its Affiliates relieves the customer of liability for the use tax;
 - (3) The Contractor and its Affiliates shall remit all use taxes they collect from customers on or before the due date specified in the Contract, which may not be later than the last day of the month next succeeding the end of a calendar quarter or other tax collection period during which the tax was collected;
 - (4) The Contractor and its Affiliates are not liable for use tax billed by them but not paid to them by a customer; and
 - (5) Any Contractor or Affiliate who fails to remit use taxes collected on behalf of its customers by the due date specified in the Contract shall be subject to the interest and penalties provided for persons required to collect sales tax under chapter 219 of the general statutes.
- (b) For purposes of this section of the Contract, the word "Affiliate" means any person, as defined in section 12-1 of the general statutes, that controls, is controlled by, or is under common control with another person. A person controls another person if the person owns, directly or indirectly, more than ten per cent of the voting securities of the other person. The word "voting security" means a security that confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business, or that is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. "Voting security" includes a general partnership interest.
- (c) The Contractor represents and warrants that each of its Affiliates has vested in the Contractor plenary authority to so bind the Affiliates in any agreement with the State of Connecticut. The Contractor on its own behalf and on behalf of its Affiliates shall also provide, no later than 30 days after receiving a request by the State's contracting authority, such information as the State may require to ensure, in the State's sole determination, compliance with the provisions of Chapter 219 of the Connecticut General Statutes, including, but not limited to, §12-411b.
36. Whistleblowing. This Contract may be subject to the provisions of Section 4-61dd of the Connecticut General Statutes. In accordance with this statute, if an officer, employee or appointing authority of the Contractor takes or threatens to take any personnel action against any employee of the Contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of such statute, the Contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of this Contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The State may request that the Attorney General bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. In accordance with subsection (f) of such statute, each large state contractor, as defined in the statute, shall post a notice of the provisions of the statute relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the Contractor.
37. Notice. All notices, demands, requests, consents, approvals or other communications required or permitted to be given or which are given with respect to this Contract (for the purpose of this section collectively called "Notices") shall be deemed to have been effected at such time as the notice is placed in the U.S. mail, first class and postage pre-paid, return receipt requested or placed

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with a recognized, overnight express delivery service that provides for a return receipt. All such Notices shall be in writing and shall be addressed as follows:

If to the Agency:

State of Connecticut Teachers' Retirement Board

ADDRESS 765 Asylum Avenue
Hartford, CT 06105

Attention: Administrator

If to the Contractor:

NAME Express Scripts, Inc.

ADDRESS One Express Way
St. Louis, MO 63121

Attention: Legal Department

38. **Insurance.** Before commencing Performance, the Contractor shall obtain and maintain at its own cost and expense for the duration of the Contract, the following insurance as described in (a) through (d) below. Contractor shall assume any and all deductibles in the described insurance policies. The Contractor's insurers shall have no right of recovery or subrogation against the State and the described Contractor's insurance shall be primary coverage. Any failure to comply with the claim reporting provisions of the policy shall not affect coverage provided to the State.
- (a) Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. Coverage shall include, Premises and Operations, Independent Contractors, Products and Completed Operations, Contractual Liability and Broad Form Property Damage coverage. If a general aggregate is used, the general aggregate limit shall apply separately to the project or the general aggregate limit shall be twice the occurrence limit.
 - (b) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury. Coverage extends to owned, hired and non-owned automobiles. If the vendor/contractor does not own an automobile, but one is used in the execution of the contract, then only hired and non-owned coverage is required. If a vehicle is not used in the execution of the contract then automobile coverage is not required.
 - (c) Professional Liability: \$1,000,000 limit of liability.
 - (d) Workers' Compensation and Employers Liability: Statutory coverage in compliance with the Compensation laws of the State of Connecticut. Coverage shall include Employer's Liability with minimum limits of \$100,000 each accident, \$500,000 Disease – Policy limit, \$100,000 each employee.

39. Headings. The headings given to the sections in the Contract are inserted only for convenience and are in no way to be construed as part of the Contract or as a limitation of the scope of the particular section to which the heading refers.
40. Number and Gender. Whenever the context so requires, the plural or singular shall include each other and the use of any gender shall include all genders.
41. Parties. To the extent that any Contractor Party is to participate or Perform in any way, directly or indirectly in connection with the Contract, any reference in the Contract to "Contractor" shall also be deemed to include "Contractor Parties," as if such reference had originally specifically included "Contractor Parties" since it is the parties' intent for the terms "Contractor Parties" to be vested with the same respective rights and obligations as the term "Contractor."
42. Contractor Changes. The Contractor shall notify the Agency in writing no later than ten (10) Days from the effective date of any change in:
- (a) its certificate of incorporation or other organizational document;
 - (b) more than a controlling interest in the ownership of the Contractor; or
 - (c) the individual(s) in charge of the Performance.

This change shall not relieve the Contractor of any responsibility for the accuracy and completeness of the Performance. The Agency, after receiving written notice by the Contractor of any such change, may require such agreements, releases and other instruments evidencing, to the Agency's satisfaction, that any individuals retiring or otherwise separating from the Contractor have been compensated in full or that provision has been made for compensation in full, for all work performed under terms of the Contract. The Contractor shall deliver such documents to the Agency in accordance with the terms of the Agency's written request. The Agency may also require, and the Contractor shall deliver, a financial statement showing that solvency of the Contractor is maintained. The death of any Contractor Party, as applicable, shall not release the Contractor from the obligation to Perform under the Contract; the surviving Contractor Parties, as appropriate, must continue to Perform under the Contract until Performance is fully completed.

43. Further Assurances. The parties shall provide such information, execute and deliver any instruments and documents and take such other actions as may be necessary or reasonably requested by the other party which are not inconsistent with the provisions of this Contract and which do not involve the vesting of rights or assumption of obligations other than those provided for in the Contract, in order to give full effect to the Contract and to carry out the intent of the Contract.
44. Audit and Inspection of Plants, Places of Business and Records.
- (a) The State and its agents, including, but not limited to, the Connecticut Auditors of Public Accounts, Attorney General and State's Attorney and their respective agents, may, at reasonable hours, inspect and examine all of the parts of the Contractor's and Contractor Parties' plants and places of business which, in any way, are related to, or involved in, the performance of this Contract.
 - (b) The Contractor shall maintain, and shall require each of the Contractor Parties to maintain, accurate and complete Records. The Contractor shall make all of its and the Contractor Parties' Records available at all reasonable hours for audit and inspection by the State and its agents.

- (c) The State shall make all requests for any audit or inspection in writing and shall provide the Contractor with at least twenty-four (24) hours' notice prior to the requested audit and inspection date. If the State suspects fraud or other abuse, or in the event of an emergency, the State is not obligated to provide any prior notice.
 - (d) The Contractor will pay for all costs and expenses of any audit or inspection which reveals information that, in the sole determination of the State, is sufficient to constitute a breach by the Contractor under this Contract. The Contractor will remit full payment to the State for such audit or inspection no later than 30 days after receiving an invoice from the State. If the State does not receive payment within such time, the State may setoff the amount from any moneys which the State would otherwise be obligated to pay the Contractor in accordance with this Contract's Setoff provision.
 - (e) The Contractor shall keep and preserve or cause to be kept and preserved all of its and Contractor Parties' Records until three (3) years after the latter of (i) final payment under this Contract, or (ii) the expiration or earlier termination of this Contract, as the same may be modified for any reason. The State may request an audit or inspection at any time during this period. If any Claim or audit is started before the expiration of this period, the Contractor shall retain or cause to be retained all Records until all Claims or audit findings have been resolved.
 - (f) The Contractor shall cooperate fully with the State and its agents in connection with an audit or inspection. Following any audit or inspection, the State may conduct and the Contractor shall cooperate with an exit conference.
 - (g) The Contractor shall incorporate this entire Section verbatim into any contract or other agreement that it enters into with any Contractor Party.
45. Background Checks. The State may require that the Contractor and Contractor Parties undergo criminal background checks as provided for in the State of Connecticut Department of Emergency Services and Public Protection Administration and Operations Manual or such other State document as governs procedures for background checks. The Contractor and Contractor Parties shall cooperate fully as necessary or reasonably requested with the State and its agents in connection with such background checks.
46. Continued Performance. The Contractor and Contractor Parties shall continue to Perform their obligations under the Contract while any dispute concerning the Contract is being resolved.
47. Working and Labor Synergies. The Contractor shall be responsible for maintaining a tranquil working relationship between the Contractor work force, the Contractor Parties and their work force, State employees, and any other contractors present at the work site. The Contractor shall quickly resolve all labor disputes which result from the Contractor's or Contractor Parties' presence at the work site, or other action under their control. Labor disputes shall not be deemed to be sufficient cause to allow the Contractor to make any claim for additional compensation for cost, expenses or any other loss or damage, nor shall those disputes be deemed to be sufficient reason to relieve the Contractor from any of its obligations under the Contract.
48. Contractor Responsibility.
- (a) The Contractor shall be responsible for the entire Performance under the Contract regardless of whether the Contractor itself performs. The Contractor shall be the sole point of contact concerning

the management of the Contract, including Performance and payment issues. The Contractor is solely and completely responsible for adherence by the Contractor Parties to all applicable provisions of the Contract.

- (b) The Contractor shall exercise all reasonable care to avoid damage to the State's property or to property being made ready for the State's use, and to all property adjacent to any work site. The Contractor shall promptly report any damage, regardless of cause, to the State.

49. Severability. If any term or provision of the Contract or its application to any person, entity or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder of the Contract or the application of such term or provision shall not be affected as to persons, entities or circumstances other than those as to whom or to which it is held to be invalid or unenforceable. Each remaining term and provision of the Contract shall be valid and enforced to the fullest extent possible by law.

50. Confidential Information. The Agency will afford due regard to the Contractor's request for the protection of proprietary or confidential information which the Agency receives. However, all materials associated with the Bid and the Contract are subject to the terms of the Connecticut Freedom of Information Act ("FOIA") and all corresponding rules, regulations and interpretations. In making such a request, the Contractor may not merely state generally that the materials are proprietary or confidential in nature and not, therefore, subject to release to third parties. Those particular sentences, paragraphs, pages or sections that the Contractor believes are exempt from disclosure under the FOIA must be specifically identified as such. Convincing explanation and rationale sufficient to justify each exemption consistent with the FOIA must accompany the request. The rationale and explanation must be stated in terms of the prospective harm to the competitive position of the Contractor that would result if the identified material were to be released and the reasons why the materials are legally exempt from release pursuant to the FOIA. To the extent that any other provision or part of the Contract, especially including the Bid, the Records and the specifications, conflicts or is in any way inconsistent with this section, this section controls and shall apply and the conflicting provision or part shall not be given effect. If the Contractor indicates that certain documentation is submitted in confidence, by specifically and clearly marking said documentation as "CONFIDENTIAL," the Agency will endeavor to keep said information confidential to the extent permitted by law. The Agency, however, has no obligation to initiate, prosecute or defend any legal proceeding or to seek a protective order or other similar relief to prevent disclosure of any information that is sought pursuant to a FOIA request. The Contractor shall have the burden of establishing the availability of any FOIA exemption in any proceeding where it is an issue. In no event shall the Agency or the State have any liability for the disclosure of any documents or information in its possession which the Agency believes are required to be disclosed pursuant to the FOIA or other requirements of law.

51. References to Statutes, Public Acts, Regulations, Codes and Executive Orders.

All references in this Contract to any statute, public act, regulation, code or executive order shall mean such statute, public act, regulation, code or executive order, respectively, as it has been amended, replaced or superseded at any time. Notwithstanding any language in this Contract that relates to such statute, public act, regulation, code or executive order, and notwithstanding a lack of a formal amendment to this Contract, this Contract shall always be read and interpreted as if it contained the most current and applicable wording and requirements of such statute, public act, regulation, code or executive order as if their most current language had been used in and requirements incorporated into this Contract at the time of its execution.

52. Cross-Default.

- (a) If the Contractor or Contractor Parties breach, default or in any way fail to Perform satisfactorily under the Contract, then the Agency may, in its sole discretion, without more and without any action whatsoever required of the Agency, treat any such event as a breach, default or failure to perform under any or all other agreements or arrangements ("Other Agreements") that the Contractor or Contractor Parties have with the Agency. Accordingly, the Agency may then exercise at its sole option any and all of its rights or remedies provided for in the Contract or Other Agreements, either selectively or collectively and without such election being deemed to prejudice any rights or remedies of the Agency, as if the Contractor or Contractor Parties had suffered a breach, default or failure to perform under the Other Agreements.
- (b) If the Contractor or Contractor Parties breach, default or in any way fail to Perform satisfactorily under any or all Other Agreements with the Agency or the State, then the Agency may, in its sole discretion, without more and without any action whatsoever required of the Agency, treat any such event as a breach, default or failure to Perform under the Contract. Accordingly, the Agency may then exercise at its sole option any and all of its rights or remedies provided for in the Other Agreements or the Contract, either selectively or collectively and without such election being deemed to prejudice any rights or remedies of the Agency or the State, as if the Contractor or Contractor Parties had suffered a breach, default or failure to Perform under the Contract.
53. Disclosure of Records. This Contract may be subject to the provisions of section 1-218 of the Connecticut General Statutes. In accordance with this statute, each contract in excess of two million five hundred thousand dollars between a public agency and a person for the performance of a governmental function shall (a) provide that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function, and (b) indicate that such records and files are subject to FOIA and may be disclosed by the public agency pursuant to FOIA. No request to inspect or copy such records or files shall be valid unless the request is made to the public agency in accordance with FOIA. Any complaint by a person who is denied the right to inspect or copy such records or files shall be brought to the Freedom of Information Commission in accordance with the provisions of sections 1-205 and 1-206 of the Connecticut General Statutes.
54. Summary of State Ethics Laws. Pursuant to the requirements of section 1-101qq of the Connecticut General Statutes, the summary of State ethics laws developed by the State Ethics Commission pursuant to section 1-81b of the Connecticut General Statutes is incorporated by reference into and made a part of the Contract as if the summary had been fully set forth in the Contract.
55. Sovereign Immunity. The parties acknowledge and agree that nothing in the Solicitation or the Contract shall be construed as a modification, compromise or waiver by the State of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut to the State or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of the Contract. To the extent that this section conflicts with any other section, this section shall govern.
56. Time of the Essence. Time is of the essence with respect to all provisions of this Contract that specify a time for performance; provided, however, that this provision shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Contract.
57. Certification as Small Contractor or Minority Business Enterprise. The Contractor shall be in breach of this Contract if the Contractor is certified as a "small contractor" or a "minority business enterprise" under Conn. Gen. Stat. § 4a-60g and that certification lapses during the term of this Contract.

58. Campaign Contribution Restriction. For all State contracts as defined in Conn. Gen. Stat. § 9-612(g)(1) having a value in a calendar year of \$50,000 or more or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this Contract expressly acknowledges receipt of the State Elections Enforcement Commission's notice advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice, as set forth in "Notice to Executive Branch State Contractors and Prospective State Contractors of Campaign Contribution and Solicitation Limitations," attached as Exhibit C.

59. Health Insurance Portability and Accountability Act.

- (a) If the Contractor is a Business Associate under the requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as noted in this Contract, the Contractor must comply with all terms and conditions of this Section of the Contract. If the Contractor is not a Business Associate under HIPAA, this Section of the Contract does not apply to the Contractor for this Contract.
- (b) The Contractor is required to safeguard the use, publication and disclosure of information on all applicants for, and all clients who receive, services under the Contract in accordance with all applicable federal and state law regarding confidentiality, which includes but is not limited to HIPAA, more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, and E; and
- (c) The Client Agency is a "covered entity" as that term is defined in 45 C.F.R. § 160.103; and
- (d) The Contractor is a "business associate" of the Agency, as that term is defined in 45 C.F.R. § 160.103; and
- (e) The Contractor and the Client Agency agree to the following in order to secure compliance with HIPAA, the requirements of Subtitle D of the Health Information Technology for Economic and Clinical Health Act ("HITECH Act"), (Pub. L. 111-5, §§ 13400 to 13423), and more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, D and E (collectively referred to herein as the "HIPAA Standards").
- (f) Definitions
 - (1) "Breach" shall have the same meaning as the term is defined in section 45 C.F.R. 164.402 and shall also include any use or disclosure of PHI that violates the HIPAA Standards.
 - (2) "Business Associate" shall mean the Contractor.
 - (3) "Covered Entity" shall mean the Client Agency.

- (4) “Designated Record Set” shall have the same meaning as the term “designated record set” in 45 C.F.R. § 164.501.
- (5) “Electronic Health Record” shall have the same meaning as the term is defined in section 13400 of the HITECH Act (42 U.S.C. §17921(5)).
- (6) “Individual” shall have the same meaning as the term “individual” in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative as defined in 45 C.F.R. § 164.502(g).
- (7) “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E.
- (8) “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103, and includes electronic PHI, as defined in 45 C.F.R. 160.103, limited to information created, maintained, transmitted or received by the Business Associate from or on behalf of the Covered Entity or from another Business Associate of the Covered Entity.
- (9) “Required by Law” shall have the same meaning as the term “required by law” in 45 C.F.R. § 164.103.
- (10) “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- (11) “More stringent” shall have the same meaning as the term “more stringent” in 45 C.F.R. § 160.202.
- (12) “This Section of the Contract” refers to the HIPAA provisions stated herein, in their entirety.
- (13) “Security Incident” shall have the same meaning as the term “security incident” in 45 C.F.R. § 164.304.
- (14) “Security Rule” shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. part 160 and part 164, subpart A and C.
- (15) “Unsecured protected health information” shall have the same meaning as the term as defined in 45 C.F.R. 164.402.
- (g) Obligations and Activities of Business Associates.

- (1) Business Associate agrees not to use or disclose PHI other than as permitted or required by this Section of the Contract or as Required by Law.
- (2) Business Associate agrees to use and maintain appropriate safeguards and comply with applicable HIPAA Standards with respect to all PHI and to prevent use or disclosure of PHI other than as provided for in this Section of the Contract and in accordance with HIPAA Standards.
- (3) Business Associate agrees to use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Covered Entity.
- (4) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by Business Associate in violation of this Section of the Contract.
- (5) Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Section of the Contract or any Security Incident of which it becomes aware.
- (6) Business Associate agrees, in accordance with 45 C.F.R. 502(e)(1)(ii) and 164.308(d)(2), if applicable, to ensure that any subcontractors that create, receive, maintain or transmit PHI on behalf of the Business Associate, agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information;
- (7) Business Associate agrees to provide access (including inspection, obtaining a copy or both), at the request of the Covered Entity, and in the time and manner designated by the Covered Entity, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524. Business Associate shall not charge any fees greater than the lesser of the amount charged by the Covered Entity to an Individual for such records; the amount permitted by state law; or the Business Associate's actual cost of postage, labor and supplies for complying with the request.
- (8) Business Associate agrees to make any amendments to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of the Covered Entity, and in the time and manner designated by the Covered Entity.

- (9) Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created, maintained, transmitted or received by, Business Associate on behalf of Covered Entity, available to Covered Entity or to the Secretary in a time and manner agreed to by the parties or designated by the Secretary, for purposes of the Secretary investigating or determining Covered Entity's compliance with the HIPAA Standards..
- (10) Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.
- (11) Business Associate agrees to provide to Covered Entity, in a time and manner designated by the Covered Entity, information collected in accordance with subsection (g)(10) of this Section of the Contract, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder. Business Associate agrees at the Covered Entity's direction to provide an accounting of disclosures of PHI directly to an individual in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.
- (12) Business Associate agrees to comply with any State or federal law that is more stringent than the Privacy Rule.
- (13) Business Associate agrees to comply with the requirements of the HITECH Act relating to privacy and security that are applicable to the Covered Entity and with the requirements of 45 C.F.R. §§ 164.504(e), 164.308, 164.310, 164.312, and 164.316.
- (14) In the event that an Individual requests that the Business Associate
 - (A) restrict disclosures of PHI;
 - (B) provide an accounting of disclosures of the Individual's PHI;
 - (C) provide a copy of the Individual's PHI in an Electronic Health Record; or

- (D) amend PHI in the Individual's Designated Record Set

the Business Associate agrees to notify the Covered Entity, in writing, within five Days of the request.

- (15) Business Associate agrees that it shall not, and shall ensure that its subcontractors do not, directly or indirectly, receive any remuneration in exchange for PHI of an Individual without
 - (A) the written approval of the Covered Entity, unless receipt of remuneration in exchange for PHI is expressly authorized by this Contract and
 - (B) the valid authorization of the Individual, except for the purposes provided under section 13405(d)(2) of the HITECH Act, (42 U.S.C. § 17935(d)(2)) and in any accompanying regulations
- (16) Obligations in the Event of a Breach.
 - (A) The Business Associate agrees that, following the discovery by the Business Associate or by a subcontractor of the Business Associate of any use or disclosure not provided for by this section of the Contract, any breach of Unsecured protected health information, or any Security Incident, it shall notify the Covered Entity of such Breach in accordance with Subpart D of Part 164 of Title 45 of the Code of Federal Regulations and this Section of the Contract.
 - (B) Such notification shall be provided by the Business Associate to the Covered Entity without unreasonable delay, and in no case later than 30 days after the Breach is discovered by the Business Associate, or a subcontractor of the Business Associate, except as otherwise instructed in writing by a law enforcement official pursuant to 45 C.F.R. 164.412. A Breach is considered discovered as of the first day on which it is, or reasonably should have been, known to the Business Associate or its subcontractor. The notification shall include the identification and last known address, phone number and email address of each Individual (or the next of kin of the individual if the Individual is deceased) whose Unsecured protected health information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during such Breach.
 - (C) The Business Associate agrees to include in the notification to the Covered Entity at least the following information:

1. A description of what happened, including the date of the Breach; the date of the discovery of the Breach; the unauthorized person, if known, who used the PHI or to whom it was disclosed; and whether the PHI was actually acquired or viewed.
 2. A description of the types of Unsecured protected health information that were involved in the Breach (such as full name, Social Security number, date of birth, home address, account number, or disability code).
 3. The steps the Business Associate recommends that Individual(s) take to protect themselves from potential harm resulting from the Breach.
 4. A detailed description of what the Business Associate is doing or has done to investigate the Breach, to mitigate losses, and to protect against any further Breaches.
 5. Whether a law enforcement official has advised the Business Associate, either verbally or in writing, that he or she has determined that notification or notice to Individuals or the posting required under 45 C.F.R. 164.412 would impede a criminal investigation or cause damage to national security and; if so, contact information for said official.
- (D) If directed by the Covered Entity, the Business Associate agrees to conduct a risk assessment using at least the information in subparagraphs 1 to 4, inclusive of (g) (16) (C) of this Section and determine whether, in its opinion, there is a low probability that the PHI has been compromised. Such recommendation shall be transmitted to the Covered Entity within 20 business days of the Business Associate's notification to the Covered Entity.
- (E) If the Covered Entity determines that there has been a Breach, as defined in 45 C.F.R. 164.402, by the Business Associate or a subcontractor of the Business Associate, the Business Associate, if directed by the Covered Entity, shall provide all notifications required by 45 C.F.R. 164.404 and 45 C.F.R. 164.406.
- (F) Business Associate agrees to provide appropriate staffing and have established procedures to ensure that Individuals

informed of a Breach have the opportunity to ask questions and contact the Business Associate for additional information regarding the breach. Such procedures shall include a toll-free telephone number, an e-mail address, a posting on its website and a postal address. Business Associate agrees to include in the notification of a Breach by the Business Associate to the Covered Entity, a written description of the procedures that have been established to meet these requirements. Costs of such contact procedures will be borne by the Business Associate.

- (G) Business Associate agrees that, in the event of a Breach, it has the burden to demonstrate that it has complied with all notifications requirements set forth above, including evidence demonstrating the necessity of a delay in notification to the Covered Entity.

(h) Permitted Uses and Disclosure by Business Associate.

- (1) General Use and Disclosure Provisions Except as otherwise limited in this Section of the Contract, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Contract, provided that such use or disclosure would not violate the HIPAA Standards if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.
- (2) Specific Use and Disclosure Provisions
 - (A) Except as otherwise limited in this Section of the Contract, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.
 - (B) Except as otherwise limited in this Section of the Contract, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

- (C) Except as otherwise limited in this Section of the Contract, Business Associate may use PHI to provide data aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).
- (i) Obligations of Covered Entity.
 - (1) Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices of Covered Entity, in accordance with 45 C.F.R. § 164.520, or to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
 - (2) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual(s) to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
 - (3) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- (j) Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Standards if done by the Covered Entity, except that Business Associate may use and disclose PHI for data aggregation, and management and administrative activities of Business Associate, as permitted under this Section of the Contract.
- (k) Term and Termination.
 - (1) Term. The term of this Section of the Contract shall be effective as of the date the Contract is effective and shall terminate when the information collected in accordance with provision (g)(10) of this Section of the Contract is provided to the Covered Entity and all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
 - (2) Termination for Cause Upon Covered Entity's knowledge of a material Breach by Business Associate, Covered Entity shall either:
 - (A) Provide an opportunity for Business Associate to cure the Breach or end the violation and terminate the Contract if Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity in accordance with Section 11 of the Contract; or

- (B) Immediately terminate the Contract if Business Associate has breached a material term of this Section of the Contract and cure is not possible; or
 - (C) If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
- (3) Effect of Termination.
 - (A) Except as provided in (k)(2) of this Section of the Contract, upon termination of this Contract, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity. Business Associate shall also provide the information collected in accordance with section (g)(10) of this Section of the Contract to the Covered Entity within ten Days of the notice of termination. This section shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
 - (B) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon documentation by Business Associate that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Section of the Contract to such PHI and limit further uses and disclosures of PHI to those purposes that make return or destruction infeasible, for as long as Business Associate maintains such PHI. Infeasibility of the return or destruction of PHI includes, but is not limited to, requirements under State or federal law that the Business Associate maintains or preserves the PHI or copies thereof.
- (l) Miscellaneous Sections.
 - (1) Regulatory References. A reference in this Section of the Contract to a section in the HIPAA Standards means the section as in effect or as amended.
 - (2) Amendment. The parties agree to take such action as is necessary to amend this Section of the Contract from time to time as is necessary for Covered Entity to comply with requirements of HIPAA, the HITECH Act and the HIPAA Standards (all as amended).

- (3) Survival. The respective rights and obligations of Business Associate shall survive the termination of this Contract.
- (4) Effect on Contract. Except as specifically required to implement the purposes of this Section of the Contract, all other terms of the Contract shall remain in force and effect.
- (5) Construction. This Section of the Contract shall be construed as broadly as necessary to implement and comply with HIPAA, the HITECH Act and the HIPAA Standards (all as amended). Any ambiguity in this Section of the Contract shall be resolved in favor of a meaning that complies, and is consistent with, HIPAA, the HITECH Act and the HIPAA Standards. (all as amended)
- (6) Disclaimer. Covered Entity makes no warranty or representation that compliance with this Section of the Contract will be adequate or satisfactory for Business Associate's own purposes. Covered Entity shall not be liable to Business Associate for any claim, civil or criminal penalty, loss or damage related to or arising from the unauthorized use or disclosure of PHI by Business Associate or any of its officers, directors, employees, contractors or agents, or any third party to whom Business Associate has disclosed PHI contrary to the sections of this Contract or applicable law. Business Associate is solely responsible for all decisions made, and actions taken, by Business Associate regarding the safeguarding, use and disclosure of PHI within its possession, custody or control.
- (7) Indemnification. The Business Associate shall indemnify and hold the Covered Entity harmless from and against any and all claims, liabilities, judgments, fines, assessments, penalties, awards and any statutory damages that may be imposed or assessed pursuant to HIPAA, the HIPAA Standards, or the HITECH Act (all as amended), including, without limitation, attorney's fees, expert witness fees, costs of investigation, litigation or dispute resolution, and costs awarded thereunder, relating to or arising out of any violation by the Business Associate and its agents, including subcontractors, of any obligation of Business Associate and its agents, including subcontractors, under this Section of the Contract, under HIPAA, the HITECH Act, and the HIPAA Standards.

60. Protection of Confidential Information.

- (a) Contractor and Contractor Parties, at their own expense, have a duty to and shall protect from a Confidential Information Breach any and all Confidential Information which they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in accordance with current industry standards.
- (b) Each Contractor or Contractor Party shall develop, implement and maintain a comprehensive data - security program for the protection of Confidential Information. The safeguards

contained in such program shall be consistent with and comply with the safeguards for protection of Confidential Information, and information of a similar character, as set forth in all applicable federal and state law and written policy of the Agency or State concerning the confidentiality of Confidential Information. Such data-security program shall include, but not be limited to, the following:

- (1) A security policy for employees related to the storage, access and transportation of data containing Confidential Information;
 - (2) Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept;
 - (3) A process for reviewing policies and security measures at least annually;
 - (4) Creating secure access controls to Confidential Information, including but not limited to passwords; and
 - (5) Encrypting of Confidential Information that is stored on laptops, portable devices or being transmitted electronically.
- (c) The Contractor and Contractor Parties shall notify the Agency and the Connecticut Office of the Attorney General as soon as practical, but no later than twenty-four (24) hours, after they become aware of or suspect that any Confidential Information which Contractor or Contractor Parties have come to possess or control has been subject to a Confidential Information Breach. If a Confidential Information Breach has occurred, the Contractor shall, within three (3) business days after the notification, present a credit monitoring and protection plan to the Commissioner of Administrative Services, the Agency and the Connecticut Office of the Attorney General, for review and approval. Such credit monitoring or protection plan shall be made available by the Contractor at its own cost and expense to all individuals affected by the Confidential Information Breach. Such credit monitoring or protection plan shall include, but is not limited to reimbursement for the cost of placing and lifting one (1) security freeze per credit file pursuant to Connecticut General Statutes § 36a-701a. Such credit monitoring or protection plans shall be approved by the State in accordance with this Section and shall cover a length of time commensurate with the circumstances of the Confidential Information Breach. The Contractors' costs and expenses for the credit monitoring and protection plan shall not be recoverable from the Agency, any State of Connecticut entity or any affected individuals.
- (d) The Contractor shall incorporate the requirements of this Section in all subcontracts requiring each Contractor Party to safeguard Confidential Information in the same manner as provided for in this Section.
- (e) Nothing in this Section shall supersede in any manner Contractor's or Contractor Party's obligations pursuant to HIPAA or the provisions of this Contract concerning the obligations of the Contractor as a Business Associate of Covered Entity.
61. Audit Requirements for Recipients of State Financial Assistance. For purposes of this paragraph, the word "contractor" shall be deemed to mean "nonstate entity," as that term is defined in Section 4-230 of the Connecticut General Statutes. The contractor shall provide for an annual financial audit

acceptable to the Agency for any expenditure of state-awarded funds made by the contractor. Such audit shall include management letters and audit recommendations. The State Auditors of Public Accounts shall have access to all records and accounts for the fiscal year(s) in which the award was made. The contractor will comply with federal and state single audit standards as applicable.

62. Antitrust Claims. Contractor hereby irrevocably assigns to the State of Connecticut all rights, title and interest in and to all Claims associated with this Contract that Contractor now has or may or will have and that arise under the antitrust laws of the United States, 15 USC Section 1, *et seq.* and the antitrust laws of the State of Connecticut, Connecticut General Statute § 35-24, *et seq.*, including but not limited to any and all Claims for overcharges. This assignment shall become valid and effective immediately upon the accrual of a Claim without any further action or acknowledgment by the parties.

IN WITNESS WHEREOF, the parties have executed this Contract by their duly authorized representatives with full knowledge of and agreement with its terms and conditions.

EXPRESS SCRIPTS, INC. and MEDCO
CONTAINMENT LIFE INSURANCE COMPANY

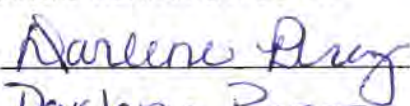
By: 
Kristy Dougherty

Print or Type Name Vice President | Commercial Division

Title: _____

Date: 3/28/2018

STATE OF CONNECTICUT
TEACHERS' RETIREMENT BOARD

By: 
Darlene Perez

Print or Type Name

Title: Administrator

Date: 4/4/18

APPENDIX A

ADDITIONAL DEFINED TERMS

This Agreement shall be subject to the additional terms and conditions contained in this Appendix A. Terms not otherwise defined in this Agreement shall have the meanings ascribed to them as set forth in this Appendix, as defined in the Medicare Drug Rules, or based upon common usage and definitions. As used in this Appendix and accompanying Exhibits, the following terms shall have the following corresponding definitions:

1. “Affiliate” means, with respect to Express Scripts, individually or collectively, any other individual, corporation, partnership, limited liability company, trust, joint venture or other enterprise or entity directly or indirectly controlling (including without limitation all directors and executive officers of such entity), controlled by or under direct or indirect common control of or with Express Scripts.
2. “Ancillary Supplies, Equipment, and Services” or “ASES” means ancillary supplies, equipment, and services provided or coordinated by Express Scripts Specialty Pharmacy in connection with Express Scripts Specialty Pharmacy’s dispensing of Specialty Products. ASES may include all or some of the following: telephonic and/or in-person training, nursing/clinical services, in-home infusion and related support, patient monitoring, medication pumps, tubing, syringes, gauze pads, sharps containers, lancets, test strips, other supplies, and durable medical equipment. The aforementioned list is illustrative only (not exhaustive) and may include other supplies, equipment, and services based on the patient’s needs, prescriber instructions, payer requirements, and/or the Specialty Product manufacturer’s requirements.
3. “Average Wholesale Price” or “AWP” means the average wholesale price of a prescription drug as identified by drug pricing services such as Medi-Span or other source recognized in the retail prescription drug industry selected by Express Scripts (the “Pricing Source”). The applicable AWP shall be the 11-digit NDC for the product on the date dispensed, and for prescriptions filled in (a) Participating Pharmacies and Express Scripts Specialty Pharmacy will be the AWP for the package size from which the prescription drug was dispensed, and (b) in the Mail Service Pharmacy the AWP for the smaller of: (i) the NDC code for the package size from which the prescription drug was dispensed, or (ii) package sizes of 100 units or 16 ounce quantities, or the next larger quantity if such specified quantities are not available. If the Pricing Source discontinues the reporting of AWP or [REDACTED] code identifiers or materially changes the

manner in which AWP is calculated [REDACTED]
[REDACTED] are reported, then Express Scripts reserves the right to make an equitable adjustment as necessary to maintain the parties' relative economics and the pricing intent of this Agreement. Express Scripts will provide Agency with at least ninety (90) days prior written notice if practicable, or as much notice as is reasonable under the circumstances, prior to such adjustment. This notice will include written illustration of the financial impact of the pricing source change. If Express Scripts makes a proposed equitable adjustment, then Agency may validate Express Scripts' proposed equitable adjustment with a third party consultant active in the pharmacy benefit industry. If, based on such third party consultant's input, Agency does not agree with Express Scripts' proposed equitable adjustment acting in good faith, the parties will make commercially reasonable efforts to find a compromise position. If a compromise position is not achieved between the parties within sixty (60) days, either party may submit such dispute to a third party mediator, whose fee will be paid evenly by each party. The determination of Brand versus Generic status shall be made based upon the "First Data" or equivalent listing of the drug's status.

4. "Brand/Generic Algorithm" or "BGA" means Express Scripts' standard and proprietary brand/generic algorithm, a copy of which may be made available for review by Agency or its Auditor upon request. The purpose of the algorithm are to utilize a comprehensive and logical algorithm to determine the brand or generic status of products in the Express Scripts master drug file using a combination of industry standard attributes, to stabilize products "flipping" between brand and generic status as may be the case when a single indicator is used from industry pricing sources, and to reduce Agency, EGWP Enrollee and provider confusion due to fluctuations in brand/generic status. Agency or its Auditor may audit Express Scripts' application of its BGA to confirm that Express Scripts is making brand and generic drug determinations consistent with such algorithm.
5. "Brand Drug" means a prescription drug identified as such in Express Scripts' master drug file using indicators from First Databank (or other source nationally recognized in the prescription drug industry) on the basis of a standard Brand/Generic Algorithm, a copy of which may be made available for review by Agency or its Auditor upon request.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

6. “Compound Prescription” means medication that consists of two or more solid, semisolid, or liquid ingredients that are weighed, measured, prepared, or mixed by, or under, the direction of a pharmacist according to a prescription order. These formulations are generally not readily available or approved by the Food and Drug Administration.
7. “Copayment”, “Coinsurance” or “Copay” means that portion of the charge for each Covered Product dispensed to an EGWP Enrollee that is the responsibility of such EGWP Enrollee (e.g., copayment, coinsurance, cost sharing, and/or deductibles under initial coverage limits and up to annual out-of-pocket thresholds) as provided under the EGWP Benefit, as shown in the Set-Up Forms.
8. “Coverage Gap” means the stage of the benefit between the initial coverage limit and the catastrophic coverage threshold, as described in the Medicare Part D prescription drug program administered by the United States federal government.
9. “Coverage Gap Discount” means the manufacturer discounts available to eligible Medicare beneficiaries receiving applicable, covered Medicare Part D drugs, while in the Coverage Gap.
10. “Coverage Gap Discount Program” means the Medicare program that makes manufacturer discounts available to eligible Medicare beneficiaries receiving applicable, covered Medicare Part D drugs, while in the Coverage Gap.
11. “Covered Drug(s)” means those prescription drugs, supplies, Specialty Products and other items that are covered under the EGWP Benefit, or treated as covered pursuant to a coverage determination or appeal.
12. “Enrollee Submitted Claim” means (a) a claim submitted by an Enrollee for Covered Drugs dispensed by a pharmacy other than a Participating Pharmacy, (b) a claim submitted by a Enrollee for a vaccination, or (c) a claim for Covered Drugs filled at a Participating Pharmacy for which the Enrollee paid the entire cost of the Covered Product.
13. “Enrollment File” means the list(s) provided by the Agency to Express Scripts, in accordance with Article II, indicating the Part D Eligible Retirees that Agency has submitted for enrollment in the EGWP Benefit, as verified by Express Scripts through CMS eligibility files.
14. “EGWP Benefit” means the prescription drug benefit to be administered by Express Scripts under this Agreement, as defined in the Description of Goods and Services in Exhibit A and as further described in the TRB

Group Health Plan document, its summary plan description, and its summary of benefits, as may be amended from time to time in accordance with the terms of this Agreement.

15. “EGWP Enrollee” means each Part D Eligible Retiree who is enrolled in the EGWP Benefit in accordance with the terms of this Agreement.
16. “EGWP Plus” means a prescription drug benefit plan design that provides non-Medicare EGWP coverage supplemental to the standard Part D benefit, and is defined by CMS as other health or prescription drug coverage, and as such, the Coverage Gap Discount is applied before any additional coverage beyond the standard Part D benefit.
17. “ERISA” means the Employee Retirement Income Security Act, as amended, 29 U.S.C. §1001 et seq.
18. “Express Scripts Specialty Pharmacy” means CuraScript, Inc., Accredo Health Group, Inc., Express Scripts Specialty Distribution Services, Inc., or another pharmacy or home health agency wholly-owned or operated by Express Scripts or one or more of its affiliates that primarily dispenses Specialty Products or provides services related thereto; provided, however, that when the Mail Service Pharmacy dispenses a Specialty Product, it shall be, hereunder, considered an Express Scripts Specialty Pharmacy.
19. “Formulary” means the list of FDA-approved prescription drugs and supplies developed by Express Scripts’ Pharmacy and Therapeutics Committee and/or customized by the Agency, which meets the requirements of the Medicare Drug Rules, and which is selected and/or adopted by the Agency. Subject to the requirements of the Medicare Drug Rules, the drugs and supplies included on the Formulary will be modified by Express Scripts from time to time as a result of factors, including, but not limited to, medical appropriateness, manufacturer Rebate arrangements, and patent expirations. Additions and/or deletions to the Formulary are hereby adopted by the Agency, subject to the Agency’s discretion, subject to the requirements of the Medicare Drug Rules, to elect not to implement any such addition or deletion through the Set-Up Form process, which such election shall be considered an Agency change to the Formulary.
20. “Generic Drug” means a prescription drug, whether identified by its chemical, proprietary, or non-proprietary name, that is therapeutically equivalent and interchangeable with drugs having an identical amount of the same active ingredient(s) and approved by the FDA, and which is identified as such in Express Scripts’ master drug file using indicators from First Databank (or other source nationally recognized in the

prescription drug industry) on the basis of a standard Brand/Generic Algorithm, a copy of which may be made available for review by the Agency or its Auditor upon request.

21. “Home Delivery Education” or “HDE” means a program through which Express Scripts provides information about Home Delivery to EGWP Enrollees currently taking maintenance medications. EGWP Enrollees receive targeted messages that explain the benefits of using Home Delivery and instruction for getting started.
22. “HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as amended, and the regulations promulgated thereunder.
23. “Ingredient Cost Charge” means the ingredient cost portion of the amount charged by Express Scripts to the Agency for each Prescription Drug Claim, subject to the “lesser of” logic set forth on Exhibit B-1, as applicable.
24. "Late Enrollment Penalty" or “LEP” means the financial penalty incurred under the Medicare Drug Rules by Medicare Part D beneficiaries who have had a continued gap in creditable coverage of sixty-three (63) days or more after the end of the beneficiary’s initial election period, adjusted from time to time by CMS.
25. “Mail Service Pharmacy” means a pharmacy wholly-owned or operated by Express Scripts or one or more of its affiliates, other than an Express Scripts Specialty Pharmacy, where prescriptions are filled and delivered to EGWP Enrollees via mail delivery service.
26. “Manufacturer Administrative Fees” means those administrative fees paid by manufacturers to Express Scripts or its Affiliate pursuant to a contract between Express Scripts or its Affiliate and the manufacturer in connection with Express Scripts or its Affiliate administering, invoicing, allocating and collecting the Rebates under the Medicare Rebate Program.
27. “Medicare Formulary” means the list of prescription drugs and supplies developed, implemented and maintained in accordance with the Medicare Drug Rules for the EGWP Benefit.
28. “Medicare Rebate Program” means Express Scripts’ or its Affiliate’s manufacturer rebate program under which Express Scripts or its Affiliate contracts with pharmaceutical manufacturers for Rebates payable on selected Covered Drugs that are reimbursed, in whole or in part, through Medicare Part D, as such program may change from time to time.

29. “Maximum Reimbursement Amount” or “MRA” means the maximum unit ingredient cost payable by the Agency for a drug on the MAC List based on maximum reimbursement payment schedule(s) developed or selected by Express Scripts. The application of MRA pricing may be subject to certain “dispensed as written” (DAW) protocols and the Agency defined plan design and coverage policies.
30. [REDACTED]
31. “Part D” or “Medicare Part D” means the Voluntary Prescription Drug Benefit Program set forth in Part D of the Act.
32. “Part D Eligible Retiree” means an individual who is (a) eligible for Part D in accordance with the Medicare Drug Rules, (b) not enrolled in a Part D plan (other than the EGWP Benefit), and (c) eligible to participate in the Agency’s Current Benefit.
33. “Participating Pharmacy” means any licensed retail pharmacy with which Express Scripts or one or more of its Affiliates has executed an agreement to provide Covered Drugs to EGWP Enrollees, but shall not include any mail order or specialty pharmacy affiliated with any such Participating Pharmacy. Participating Pharmacies are independent contractors of Express Scripts.
34. “Pass-Through” means the actual ingredient cost and dispensing fee amount paid by Express Scripts for the Prescription Drug Claim when the claim is adjudicated to the Participating Pharmacy, as set forth in the specific Participating Pharmacy remittances related to the Agency’s members claims.
35. “Pharmacy” refers to any or all Participating Pharmacy or Pharmacies, Mail Service Pharmacy, or Express Scripts Specialty Pharmacy as the context of the provision dictates.
36. “PHI” means protected health information as defined under HIPAA.
37. “PMPM” means, if applicable, per EGWP Enrollee, per month, as determined by Express Scripts from the Enrollment Files for the applicable time period.

38. “Prescription Drug Claim” means an EGWP Enrollee Submitted Claim or claim for payment of a Covered Product submitted to Express Scripts by a Participating Pharmacy, Mail Service Pharmacy, or Specialty Pharmacy as a result of dispensing Covered Drugs to a EGWP Enrollee.
39. "Prescription Drug Plan" or “PDP” shall have the meaning set forth in the Medicare Drug Rules.
40. “Rebates” means retrospective formulary rebates that are paid to Express Scripts or its Affiliate pursuant to the terms of a formulary rebate contract negotiated independently by Express Scripts or its Affiliate with a pharmaceutical manufacturer and directly attributable to the utilization of certain Covered Drugs by EGWP Enrollees under the EGWP Benefit. Rebates do not include, for example, Manufacturer Administrative Fees: product discounts or fees related to the procurement of prescription drug inventories by or on behalf of Express Scripts or its Affiliates owned and operated specialty or mail order pharmacies, as more fully described in Exhibit B; inflation payments; fees received by Express Scripts from manufacturers for care management or other services provided in connection with the dispensing of Specialty Products; or other fee-for-service arrangements whereby pharmaceutical manufacturers generally report the fees paid to Express Scripts or its Affiliates for services rendered as “bona fide service fees” pursuant to federal laws and regulations, including, but not limited to the Medicaid “Best Price” rule (collectively, “Other Pharma Revenue”). Such laws and regulations, as well as Express Scripts’ contracts with pharmaceutical manufacturers, generally prohibit Express Scripts from sharing any such “bona fide service fees” earned by Express Scripts, whether wholly or in part, with any Express Scripts client. Express Scripts represents and warrants that it will not enter into any agreement with a pharmaceutical manufacturer for Other Pharma Revenue in exchange for a reduction of Rebates.
41. “Set-Up Forms” means any standard Express Scripts document or form, which when completed and signed by the Agency (electronic communications from the Agency indicating the Agency’s approval of a Set-Up Form shall satisfy the foregoing), will describe the essential benefit elements and coverage rules adopted by the Agency.
42. [REDACTED]

- 43. “Specialty Product List” means the standard list of Specialty Products and their reimbursement rates applicable to the Agency under the applicable (exclusive or open) option as updated from time to time. The Specialty Product List is available to the Agency upon request.
- 44. “Specialty Products” means those injectable and non-injectable drugs on the Specialty Product List. Specialty Products, which may be administered by any route of administration, are typically used to treat chronic or complex conditions, and typically have one or more of several key characteristics, including frequent dosing adjustments and intensive clinical monitoring to decrease the potential for drug toxicity and increase the probability for beneficial treatment outcomes; intensive patient training and compliance assistance to facilitate therapeutic goals; limited or exclusive product availability and distribution (if a drug is only available through limited specialty pharmacy distribution it is always considered a Specialty Product); specialized product handling and/or administration requirements.
- 45. “True Out-of-Pocket Costs” or “TrOOP” means costs incurred by an EGWP Enrollee or by another person on behalf of an EGWP Enrollee, such as a deductible or other cost-sharing amount, with respect to Covered Drugs, as further defined in the Medicare Drug Rules.
- 46. “UM Company” means MCMC, LLC or other independent third party utilization management company contracted by Express Scripts, subject to and as further described herein.
- 47. “Usual and Customary Price” or “U&C” means the retail price charged by a Participating Pharmacy for the particular drug in a cash transaction on the date the drug is dispensed as reported to Express Scripts or its Affiliate by the Participating Pharmacy.
- 48. “Vaccine Claim” means a claim for a Covered Drug which is a vaccine.
- 49. “Vendor Transaction Fee” means the data interchange fee that Express Scripts is charged by its third party vendor to convert Vaccine Claims submitted electronically by physicians to NCPDP 5.1 format in order for Express Scripts to process the claim

EXHIBIT A

DESCRIPTION OF GOODS AND SERVICES

A. Express Scripts, Inc.'s affiliate, Medco Containment Life Insurance Company (collectively, Express Scripts, Inc. and Medco Containment Life Insurance Company are referred to herein as "Express Scripts" or "Contractor"), is an approved CMS-contracted prescription drug plan ("PDP") sponsor for an Employer Group Waiver Plan PDP in accordance with CMS regulations has received approval from the Centers for Medicare and Medicaid Services ("CMS") to serve as a Prescription Drug Plan Sponsor (a "PDP Sponsor") and to provide prescription drug coverage that meets the requirements of, and pursuant to, the Voluntary Prescription Drug Benefit Program set forth in Part D of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, 42 U.S.C. §1395w-101 through 42 U.S.C. §1395w-152 (the "Act") and all applicable and related rules and regulations promulgated, issued or adopted by CMS or other governmental agencies with jurisdiction over enforcement of the Act, including, but not limited to, 42 C.F.R. §423.1 through 42 C.F.R. §423.910 (with the exception of Subparts Q, R, and S), and the terms of any PDP Sponsor contract between CMS and Express Scripts (collectively, the "Medicare Drug Rules"); and

B. Pursuant to the waivers granted by CMS under 42 U.S.C. §1395w-132(b), Express Scripts offers employer-only sponsored group waiver plans ("EGWPs") to employers that wish to provide prescription drug benefits to their Part D Eligible Retirees (as defined below) in accordance with the Medicare Drug Rules; and

C. The Agency currently provides a prescription drug benefit (the "Current Benefit") to its Part D Eligible Retirees (as defined below) pursuant to a non-Medicare, self-insured welfare benefit plan ("the TRB Group Health Plan"); and

D. The Agency has engaged Express Scripts to offer a prescription drug benefit to the Agency's Part D Eligible Retirees pursuant to an EGWP arrangement (the "EGWP Benefit," as further defined below) that is substantially similar in design to the Current Benefit, and as part of the TRB Group Health Plan; and

E. Provided that the EGWP Benefit meets the actuarial equivalence standards of the Medicare Drug Rules, Express Scripts will: offer the EGWP Benefit to the Agency's Part D Eligible Retirees, and will offer other administrative services, including: drug utilization review; construction and contracting of a pharmacy network; processing of pharmacy claims; mail and specialty pharmacy fulfillment; pharmaceutical cost-containment; clinical, safety, adherence, and other like programs; drug utilization review; and formulary and rebate management and administration services (the "PBM Services"). All services will

be provided in accordance with the Medicare Drug Rules and pursuant to the terms and conditions of this Agreement, including all Appendices and Exhibits to this Agreement.

EXHIBIT B

**PHARMACY REIMBURSEMENT RATES, ADMINISTRATIVE
SERVICES AND FEES, STANDARD REPORTING, AND REBATES**

Express Scripts shall be the Agency's exclusive provider of EGWP services for the Agency's Group Health Plans offering a prescription benefit. Capitalized terms used but not defined in this Exhibit B may be defined either in the body of the Agreement or in Exhibit C. The financial terms set forth in Exhibit B

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The following are incorporated into Exhibit B:

Exhibit B-1

General Financial Terms, Premium Collection, and Pharmacy
Reimbursement Rates

Exhibit B-2
Administrative and Clinical Program Fees

Exhibit B-3
Rebates

EXHIBIT B-1

GENERAL FINANCIAL TERMS, PREMIUM COLLECTION, AND PHARMACY REIMBURSEMENT RATES

Section I Billing, Payment, Premiums, and CMS Payments

1.1 **Billing.** Express Scripts or its Affiliate will bill the Agency for, and the Agency shall pay Express Scripts or its Affiliate, (i) [REDACTED] for the Claims Reimbursement Amount (as defined below) for such billing period; and (ii) [REDACTED] for any Administrative Services Fees (as defined below) incurred by the Agency [REDACTED] (or earlier if not yet invoiced to the Agency). In addition, [REDACTED], Express Scripts will bill the Agency for, and the Agency shall pay Express Scripts, the PMPM Fees (as defined below) due for such period. The Claims Reimbursement Amount, PMPM Fees, and Administrative Services Fees to be referred to collectively as “Fees”. For purposes of this Section 1.1:

(a) “Claims Reimbursement Amount” means, with respect to any period, the amount equal to the aggregate amount of reimbursement due from the Agency to Express Scripts for Covered Drugs dispensed to EGWP Enrollees by the Pharmacies, and, if applicable, for EGWP Enrollee Submitted Claims during such period, including dispensing fees and all associated claims processing administrative fees, based on the reimbursement rates and pricing terms set forth on Exhibit B.

(b) “PMPM Fees” means, with respect to any period, all per EGWP Enrollee per month administrative fees (“PMPM Fees”) as set forth on Exhibit B-2 for such period.

(c) “Administrative Services Fees” means the fees incurred by the Agency, if any, for Express Scripts’ or its Affiliate’s performance of the administrative services listed in the Administrative Fees table set forth on Exhibit B-2.

1.2 **Payment.** The Agency shall pay all Fees to Express Scripts by wire or ACH transfer, debit or other electronic method within [REDACTED] from the date of the Agency’s receipt of the Express Scripts invoice. Agency shall be responsible for all costs of collection and shall reimburse Express Scripts for such costs and expenses, including reasonable attorneys’ fees. Any amounts not paid by the due date thereof shall bear interest at the State of Connecticut statutory interest rate.

If the Agency disputes any item on any invoice, the Agency shall provide written notice of the amount in dispute within thirty (30) days of the date of

the invoice. The Agency shall pay the full amount of any such invoice and shall notify Express Scripts of the disputed amount. Express Scripts also shall have the option to retain amounts owed to Agency based on CMS Reimbursement and Rebates with respect to EGWP Enrollee utilization to apply against past due and unpaid and delinquent Fees owed by the Agency to Express Scripts only to the extent of such past due and unpaid Fees.

1.3 Collection of Premiums.

(a) Collection of Monthly Premium Amounts. In accordance with the Medicare Drug Rules, Express Scripts hereby delegates the premium collection function to the Agency and hereby directs the Agency, on behalf of Express Scripts, to collect all monthly premium payments due from EGWP Enrollees for participation in the EGWP Benefit. In connection with Express Scripts' delegation of the premium collection function to the Agency under this Section 1.2(a), the Agency hereby agrees as follows:

(i) That in no event, including, but not limited to, nonpayment by Express Scripts of any amounts due by Express Scripts to the Agency pursuant to this Agreement, Express Scripts' insolvency, or Express Scripts' breach of this Agreement, will the Agency bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against an EGWP Enrollee or persons acting on his or her behalf for payments that are the financial responsibility of Express Scripts under this Agreement. The foregoing is not intended to prohibit the Agency from collecting premium amounts due by EGWP Enrollees for participation in the EGWP Benefit;

(ii) That the DHHS, the Comptroller General, or their designees shall have the right to inspect, evaluate, and audit pertinent contracts, books, documents, papers and records of the the Agency involving the Agency's collection of premium amounts from EGWP Enrollees, and that DHHS', the Comptroller General's, or their designees' right to inspect, evaluate, and audit any such pertinent information will exist through ten (10) years from the date of termination or expiration of this Agreement, or from the date of completion of any audit, whichever is later;

(iii) That if Express Scripts or CMS determines that the Agency is not performing the premium collection function in compliance with all applicable Medicare Drug Rules and the Agency is unable to cure such noncompliance within thirty (30) days following notice from Express Scripts or CMS, then Express

Scripts may either: (i) upon prior written notice to the Agency, revoke all or a portion of such delegated function as Express Scripts deems necessary to effectuate Express Scripts' ultimate responsibility to CMS for the performance of such delegated function under Express Scripts' contract with CMS; or (ii) negotiate an alternative remedy in lieu of revocation of delegation, so long as such remedy conforms to the requirements of the Medicare Drug Rules; and

(iv) If the Agency further delegates or subcontracts the performance of the premium collection function to a third party, it shall do so in compliance with CMS rules and regulations.

(b) Determination of Monthly Premium Amounts (if any) to be Subsidized by the Agency. In determining the amount of the EGWP Enrollee's monthly premium for participation in the EGWP Benefit that the Agency will subsidize, if any, the Agency shall make such determination subject to the following restrictions and any other restrictions that may be imposed by CMS:

- (i) The Agency may subsidize different amounts for different classes of EGWP Enrollees provided such classes are reasonable and based on objective business criteria, such as years of service, business location, job category, and nature of compensation (e.g., salaried vs. hourly). Different classes cannot be based on eligibility for the Low Income Subsidy;
- (ii) The Agency may not vary the premium subsidy for individuals within a given class of EGWP Enrollees;
- (iii) The Agency may not charge an EGWP Enrollee more than the sum of his or her monthly beneficiary premium attributable to basic prescription drug coverage and 100% of the monthly beneficiary premium attributable to his or her supplemental prescription drug coverage, if any, and that by signing this Agreement, the Agency agrees and attests that it shall abide by such provisions in accordance with the requirements set forth in 42 CFR 423.504 and 423.505;
- (iv) The Agency shall directly refund to the EGWP Enrollee (or shall allow Express Scripts to do so), within forty-five (45) days of original receipt from CMS of the Low Income Subsidy premium, the full premium subsidy amount up to the monthly beneficiary premium amount previously collected from the EGWP Enrollee; provided, however, that

to the extent there are Low Income Subsidy premium amounts remaining after the Agency refunds the full monthly beneficiary premium amount to the EGWP Enrollee, then the Agency may apply that remaining portion of the Low Income Subsidy premium to the portion of the monthly premium paid by the Agency;

- (v) If the Agency is not able to reduce the up-front monthly beneficiary premium as described in subsection (iv) above, the Agency shall directly refund to the EGWP Enrollee (or shall allow Express Scripts to do so), within forty-five (45) days of original receipt from CMS of the Low Income Subsidy premium, the full premium subsidy amount up to the monthly beneficiary premium amount previously collected from the EGWP Enrollee;
- (vi) If the Low Income Subsidy amount for which an EGWP Enrollee is eligible is less than the portion of the monthly beneficiary premium paid by the EGWP Enrollee, then the Agency must communicate to the EGWP Enrollee the financial consequences for the beneficiary of enrolling in the EGWP Benefit as compared to enrolling in another Medicare Part D plan with a monthly beneficiary premium equal to or below the Low Income Subsidy amount; and
- (vii) In the event of a change in an EGWP Enrollee's Low Income Subsidy status or an EGWP Enrollee otherwise becomes ineligible to receive the Low Income Subsidy after payment of the Low Income Subsidy premium amount to the EGWP Enrollee, and upon Express Scripts' receipt of notification from CMS that such Low Income Subsidy premium amount will be recovered from Express Scripts or withheld from future payments to Express Scripts, then Express Scripts will invoice the Agency or set off from amounts otherwise owed from Express Scripts to the Agency, and in either case the Agency shall reimburse Express Scripts for, all amounts deemed by CMS to be ineligible Low Income Subsidy premium payments with respect to the EGWP Enrollee.

(c) Reporting and Auditing of Premium Amounts; Non-Payment by EGWP Enrollees. Upon reasonable advance written notice, Express Scripts or its Affiliate shall have access to the Agency's records in order to audit the monthly premium amounts collected from EGWP Enrollees for the purposes of fulfilling reporting requirements under the Medicare Drug Rules or applicable state insurance laws related to collection of such

premium amounts or to otherwise assess compliance with the Medicare Drug Rules in connection with the collection of such premium amounts. Any audits performed by Express Scripts or its Affiliate pursuant to this Section 1.3(c) will be at Express Scripts' expense. The Agency acknowledges and agrees that neither Express Scripts nor its Affiliate shall be responsible to the Agency for non-payment by any EGWP Enrollee of any monthly premium amount due by such EGWP Enrollee for participation in the EGWP Benefit. The Agency further acknowledges and agrees that in the event that either the Agency or Express Scripts (through any audit) determines that the Agency has collected a greater premium amount from an EGWP Enrollee than is due, that the Agency shall promptly refund any such overpayment to the EGWP Enrollee.

Section II. CMS Payments

2.1 CMS Reimbursement.

(a) CMS Reimbursement Payment Terms (Direct Subsidy/Low-Income Subsidy). Express Scripts will pay the Agency an amount equal to the total amount paid to Express Scripts by CMS for the following: (1) advance direct subsidy monthly payments paid to Express Scripts, if any, by CMS with respect to EGWP Enrollees and (2) low-income subsidy payments paid to Express Scripts by CMS, if any, with respect to EGWP Enrollees and subject to the provisions of Section 1.3(b) of this Exhibit (collectively, "CMS Subsidy Reimbursement"). Express Scripts will pay amounts equal to the CMS Subsidy Reimbursement, allocated pursuant to the terms of this Agreement, on a monthly basis approximately thirty (30) days after Express Scripts' receipt of the CMS Subsidy Reimbursement from CMS. Express Scripts and its Affiliates retain all right, title and interest to any and all actual CMS Subsidy Reimbursement received from CMS. Express Scripts shall pay the Agency amounts equal to the CMS Subsidy Reimbursement amounts allocated to the Agency, as specified in this Agreement, from Express Scripts' or its Affiliate's general assets (neither the Agency nor its EGWP Enrollees retain any beneficial or proprietary interest in Express Scripts' or its Affiliates general assets). The Agency acknowledges and agrees that neither it nor its EGWP Enrollees shall have a right to interest on, or the time value of, any CMS Subsidy Reimbursement payments received by Express Scripts or its affiliates during the collection period or moneys payable under this Section. Agency shall be entitled to seek collection and costs associated with such collection if Express Scripts fails to make CMS Subsidy Reimbursement payments as required by this Agreement. No CMS Subsidy Reimbursements shall be paid until this Agreement is executed by the Agency. Express Scripts shall have the right to retain or apply the Agency's allocated CMS Subsidy Reimbursement amounts or Rebates with respect to EGWP Enrollee utilization to past due

and unpaid Fees owed by the Agency to Express Scripts only to the extent of such past due and unpaid Fees and shall have the right to delay payment of CMS Subsidy Reimbursement amounts, for a reasonable period of time not to exceed ninety (90) days, to allow for final adjustments upon termination of this Agreement. Express Scripts shall pay Agency the CMS Subsidy Reimbursement amount as soon as reasonably practicable after the final adjustment.

(b) CMS Reimbursement Payment Terms (Prospective Reinsurance). Express Scripts will pay the Agency prospective reinsurance payments based on the lesser of the CMS defined per member per month prospective reinsurance for the effective plan year or the Agency's per member per month reinsurance for the most recent plan year closed by CMS for reconciliation purposes. Express Scripts will pay amounts on a monthly basis approximately thirty (30) days after Express Scripts' receipt of the prospective reinsurance reimbursement from CMS ("Prospective Reinsurance CMS Reimbursement"). Express Scripts and its affiliates retain all right, title, and interest to any and all actual Prospective Reinsurance CMS Reimbursement amounts allocated to the Agency. Express Scripts shall pay the Agency Prospective Reinsurance CMS Reimbursement amounts allocated to the Agency, as specified in this Agreement, from Express Scripts' or its affiliates' general assets (neither the Agency nor its EGWP Enrollees retain any beneficial or proprietary interest in Express Scripts' or its affiliates' general assets). The Agency acknowledges and agrees that neither it nor its EGWP Enrollees shall have a right to interest on, or the time value of, any Prospective Reinsurance CMS Reimbursement payments received by Express Scripts or its affiliates during the collection period or moneys payable under this Section. Agency shall be entitled to seek collection and costs associated with such collection if Express Scripts fails to make CMS Subsidy Reimbursement payments as required by this Agreement. No Prospective Reinsurance CMS Reimbursements shall be paid until this Agreement is executed by the Agency. Express Scripts shall have the right to retain or apply the Agency's allocated Prospective Reinsurance CMS Reimbursement amounts or Rebates with respect to EGWP Enrollee utilization to past due and unpaid Fees owed by the Agency to Express Scripts only to the extent of such past due and unpaid Fees and shall have the right to delay payment of Prospective Reinsurance CMS Reimbursement amounts, for a reasonable period of time not to exceed ninety (90) days, to allow for final adjustments upon termination of this Agreement. Express Scripts shall pay Agency the CMS Subsidy Reimbursement amount as soon as reasonably practicable after final adjustment.

(c) CMS Reimbursement Reporting. At least annually, Express Scripts will provide the Agency an accounting of all CMS Subsidy

Reimbursements and Prospective Reinsurance CMS Reimbursement received by Express Scripts from CMS pursuant to the Medicare Drug Rules with respect to the EGWP Benefit. Annually, upon written request, Express Scripts will provide retrospective reporting that outlines the date that such payments are received by Express Scripts and how the Agency was reimbursed the funds on a timely basis.

2.2 CMS-Required Reconciliation / Reinsurance.

(a) End-of-Year Reconciliation. The parties acknowledge that after the conclusion of each plan year, CMS will reconcile payment year disbursements with updated enrollment and health status data, actual low-income cost-sharing costs, actual allowable reinsurance costs, and other pertinent information. Upon final CMS end-of-year reconciliation, the following shall occur: (i) in the event that the actual incurred reinsurance amount calculated during reconciliation exceeds the prospective amounts paid to the Agency by Express Scripts, Express Scripts will pay such amounts to the Agency subject to the remaining terms of this Agreement, and (ii) in the event that the actual incurred reinsurance amount calculated during reconciliation is less than the prospective amounts paid to the Agency by Express Scripts, Agency shall repay to Express Scripts such amounts previously paid by Express Scripts in accordance with the payment terms of the Agreement. Express Scripts shall have the right to retain or apply Agency's allocated CMS End of Year Reconciliation amounts with respect to EGWP Enrollee utilization to past due and unpaid Fees owed by the Agency to Express Scripts only to the extent of such past due and unpaid Fees, and shall have the right to delay payment of CMS End of Year Reconciliation amounts, for a reasonable period of time, not to exceed ninety (90) days, to allow for final adjustments upon termination of this Agreement. Express Scripts shall have the right to apply reconciliation amounts owed from the Agency to rebates, CMS Subsidy Reimbursements, Prospective Reinsurance CMS Reimbursements, or Manufacturer Coverage Gap Discount amounts. All such payments resulting from a CMS reconciliation will be paid to the Agency no later than January 31 of the calendar year immediately following the date of Express Scripts' receipt of the reconciliation payments from CMS. If CMS subsequently recovers any end of year reconciliation payments from Express Scripts due to a CMS Plan Year reopening or other process described in the Medicare Drug Rules, then the Agency shall be obligated to repay to Express Scripts such amounts previously paid to the Agency. If CMS subsequently reimburses Express Scripts for end of year reconciliations payments due to a CMS Plan Year reopening or other process described in the Medicare Drug rules, then Express Scripts will pay such amounts to Agency. Express Scripts shall have the right to apply reconciliation amounts owed from the Agency due to a CMS Plan Year reopening to rebates, CMS Subsidy Reimbursements,

Prospective Reinsurance CMS Reimbursements, or Manufacturer Coverage Gap Discount amounts.

(b) Plan-to-Plan Reconciliation. Express Scripts will perform plan-to-plan coordination with other providers of prescription drug coverage as set forth in the Medicare Drug Rules and any related reconciliation; provided, that no later than January 31 of the calendar year immediately following completion of such coordination or reconciliation process, Express Scripts shall pay to the Agency an amount equal to payments recovered for the EGWP Benefit, but at the same time Express Scripts shall have a right to recoup from the Agency any amount which Express Scripts is obligated to pay to any other prescription drug plan pursuant to a plan-to-plan reconciliation.

2.3 Manufacturer Coverage Gap Discount.

(a) Pursuant to its CMS contract, Express Scripts has agreed to administer for EGWP Enrollees at point-of-sale the Coverage Gap Discount authorized by section 1860D-14A of the Social Security Act. In connection with the Coverage Gap Discount, CMS will coordinate the collection of discount payments from manufacturers, and payment to Express Scripts, through a CMS contractor (the "Coverage Gap Discount Payments"). Subject to Section 2.2(a) above, Express Scripts agrees to periodically remit to the Agency amounts equal to 100% of the Coverage Gap Discount Payments received by Express Scripts within forty-five (45) days of the CMS Manufacturer Payment Date. Express Scripts and its Affiliate retain all rights, title and interest to any and all actual Coverage Gap Discount Payments received from CMS. Express Scripts shall pay the Agency amounts equal to the Coverage Gap Discount Payments amounts allocated to the Agency, as specified in this Agreement, from Express Scripts' or its Affiliate's general assets (neither the Agency nor its EGWP Enrollees retain any beneficial or proprietary interest in Express Scripts' or its Affiliate's general assets). The Agency acknowledges and agrees that neither it nor its EGWP Enrollees shall have a right to interest on, or the time value of, any Coverage Gap Discount Payments received by Express Scripts or its Affiliates during the collection period or moneys payable under this Section. No Coverage Gap Discount Payments shall be paid until this Agreement is executed by the Agency. Express Scripts shall have the right to apply Agency's allocated Coverage Gap Discount Payments amount to past due and unpaid Fees and shall have the right to delay payment of Coverage Gap Discount Payments, for a reasonable period of time not to exceed ninety (90) days, to allow for final adjustments upon termination of this Agreement. Express Scripts shall pay Agency the Coverage Gap

Discount Payments amount as soon as reasonably practicable after final adjustment. Notwithstanding anything contained in this Section, Express Scripts shall retain all rights, title, and interest to the amounts that Express Scripts is contractually obligated to pay the Agency hereunder. Failure by Express Scripts to pay such amounts will constitute a breach of this Agreement.

- (b) If the EGWP Benefit administered by Express Scripts under this Agreement for the Agency includes EGWP Plus design elements, then the Coverage Gap Discount will be coordinated with the TRB Group Health Plan consistent with Medicare Part D Rules.

Section III. Annual Average Ingredient Cost Discount Guarantees **(Does Not Apply to Specialty Products)**

	Brand	Generic
<div>████████████████████</div> <div>██████████</div> <div>██████████</div>	<div>████████████████</div> <div>████████████████</div> <div>████████████████</div>	<div>████████████████████</div> <div>████████████████████</div> <div>████████████████████</div>
<div>████████████████████</div> <div>██████████</div> <div>██████████</div>	<div>████████████████</div> <div>████████████████</div> <div>████████████████</div>	
<div>████████████████████</div>	<div>████████████████</div>	<div>████████████████████</div>

Subject to annual reconciliation of the above average guarantees, the Agency will pay to Express Scripts on a per Prescription Drug Claim basis amounts determined pursuant to the following, net of applicable Copayments:

[REDACTED]
 [REDACTED]
 [REDACTED] [REDACTED]
 [REDACTED]
 [REDACTED] [REDACTED]
 [REDACTED]
 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
 [REDACTED]

Applicable dispensing fees as well as additional per/Rx Administrative Fees, if any, are set forth in the table in Section IV. below. Sales or excise tax or other governmental surcharge, if any, will be the responsibility of the Agency.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- D. Guarantee Reconciliation.** Guarantees will be measured and reconciled on an annual basis within ninety (90) days of the end of each contract year. The above guarantees are annual guarantees - if this Agreement is terminated prior to the completion of the then current contract year (hereinafter, a “Partial Contract Year”), then the above guarantees will not apply for such Partial Contract Year. To the extent the Agency changes its benefit design or Formulary during the term of the Agreement, the guarantee will be equitably adjusted if there is a material impact on the discount achieved. If Express Scripts makes a proposed equitable adjustment, the Agency may validate Express Scripts’ proposed equitable adjustment with a third party consultant active in the pharmacy benefit industry. If, based on such third party consultant’s input, Agency does not agree with all or some of the terms and conditions of Express Scripts’ proposed equitable adjustment, then Express Scripts and Agency shall, acting in good faith, make commercially reasonable efforts to find a compromise position. If a compromise position is not achieved between the parties within sixty (60) days, either party may submit such dispute to a third party mediator, whose fee will be paid evenly by each party. Subject to the remaining terms of this Agreement, Express Scripts will pay the difference attributable to any shortfall between the actual result and the guaranteed result; provided however, that Express Scripts may use an excess achieved in one or more of the above guarantees within a channel (with the channels being retail

Section IV. Per Prescription Drug Claim Dispensing and Administrative Fees (Does Not Apply to Specialty Products).

[illegible]

Annual Average Dispensing Fee Guarantees for Participating Pharmacy:

	Brand	Generic	Claims Excluded
██████████ ██████████	██████████	██████████	████████████████████ ████████████████████ ██████████

The above guarantee will be measured and reconciled on an annual basis within ninety (90) days of the end of each contract year. The above guarantee is an annual guarantee - if this Agreement is terminated prior to the completion of the then current contract year (hereinafter, a “Partial Contract Year”), then the above guarantee will not apply for such Partial Contract Year. To the extent the Agency changes its benefit design or Formulary during the term of the Agreement, the guarantee will be equitably adjusted if there is a material impact on the discount achieved. If Express Scripts makes a proposed equitable adjustment, the Agency may validate Express Scripts’ proposed equitable adjustment with a third party consultant active in the pharmacy benefit industry. If, based on such third party consultant’s input, Agency does not agree with all or some of the terms and conditions of Express Scripts’ proposed equitable adjustment, then Express Scripts and Agency shall, acting in good faith, make commercially reasonable efforts to find a compromise position. If a compromise position is not achieved between the parties within sixty (60) days, and either party reasonably does not believe that a compromise position is achievable with continued discussions, either party may submit such dispute to a third party mediator, whose fee will be paid evenly by each party. Subject to the remaining terms of this Agreement, Express Scripts will pay the difference attributable to any shortfall between the actual result and the guaranteed result; provided however, that Express Scripts may use an excess achieved in one or more of the above guarantees within a channel (with the channels being retail and mail, Specialty Products will be included in the channel from which they were dispensed) under this Agreement to make up for, and offset, a shortfall in any other guarantee within the same channel.

Section V. Specialty Products

(a) Specialty Products shall be available through Express Scripts Specialty Pharmacy and at Participating Pharmacies for the Specialty Product List for Express Scripts Specialty Pharmacy – Open, and Participating Pharmacy reimbursement rates.

	Ingredient Cost	Dispensing Fee	Administrative Fee/Rx
██████████ ██████████████ ██████████	██████████████████ ██████████ ██████████████ ██████████████	██████	██████████
██████████ ██████████ ██████████████	██████████████████ ██████████████████ ██████████████ ██████████████ ██████████	██████████	██████████

(b) Specialty Products will be excluded from any price guarantees set forth in the Agreement. In no event will the Mail Service Pharmacy or Participating Pharmacy pricing specified in the Agreement apply to Specialty Products.

(c) Express Scripts will notify the Agency no more frequently than monthly of new Specialty Products that are introduced to the market and added to the Specialty Product List on or after the Effective Date of this Agreement with their applicable Specialty Product List reimbursement rates (“Notice”). The parties agree as follows:

(i) If the Agency has expressly excluded a specific therapy class or product, Specialty Products in such excluded classes will automatically be deemed excluded from coverage and will reject as “NDC Not Covered” through Participating Pharmacies, Mail Service Pharmacy and Express Scripts Specialty Pharmacy; otherwise, all other Specialty Products will be implemented as Covered Drugs at the rate specified in the applicable Specialty Product List or Notice, and the Agency acknowledges and agrees to same. If the Agency desires to cover otherwise excluded Specialty Products, the Agency must notify Express Scripts in writing that it desires to cover the Specialty Product before Express Scripts will adjudicate as a Covered Drug, and if Express Scripts receives such confirmation of coverage from the Agency such Specialty Product will be loaded thereafter

as a Covered Drug at the applicable Specialty Product List reimbursement rate set forth in the Notice.

(ii) The Agency must notify Express Scripts in writing if it wants to exclude the Specialty Product from coverage. The exclusion will be implemented within seven (7) business days after the date of Express Scripts' receipt of such the notification. There will not be any retroactive denials for Prescription Drug Claims processed prior to Express Scripts' receipt of the rejection notice and implementation of the exclusion as provided above and the Agency will be responsible for the payment of such Prescription Drug Claims processed prior to the rejection of coverage.

(d) Specialty Products and ASES. EGWP Enrollees may have prescriptions filled through Express Scripts Specialty Pharmacy and Participating Pharmacies. Subject to applicable law, Express Scripts and Express Scripts Specialty Pharmacy may communicate with EGWP Enrollees and physicians to advise EGWP Enrollees filling Specialty Products at Participating Pharmacies of the availability of filling prescriptions through Express Scripts Specialty Pharmacy. Specialty Products will be excluded from any price guarantees set forth in the Agreement. In no event will the Mail Service Pharmacy or Participating Pharmacy pricing specified in the Agreement apply to Specialty Products.

(i) For Specialty Products filled through Express Scripts Specialty Pharmacy only, EGWP Enrollees may receive the following services from Express Scripts Specialty Pharmacy, depending on the particular therapy class or disease state: ASES; patient intake services; pharmacy dispensing services and/or social services (patient advocacy, hardship reimbursement support, and indigent and patient assistance programs).

(ii) Subject to the Agency's prior authorization requirements, if applicable, at the rates set forth in this Exhibit B-1, Express Scripts will provide or coordinate ASES for EGWP Enrollees through Express Scripts Specialty Pharmacy or through other specialty pharmacies or other independent third party providers of ASES when ASES is required. If Express Scripts or Express Scripts Specialty Pharmacy engages a third party provider of ASES, Express Scripts or Express Scripts Specialty Pharmacy shall contractually obligate such third party provider of ASES to comply with all applicable laws, including, without limitation, all applicable laws relating to professional licensure. Express Scripts does not direct or exercise any control over any third party provider

of ASES in administering Specialty Products or otherwise providing ASES.

(iii) For Specialty Products needing an additional charge to cover costs of all ASES required to administer the Specialty Products, the following standard per diem and nursing fee rates shall apply.

Therapeutic Class	Brand Name	Nursing & Per Diem
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

(e) Any ancillary supplies, equipment, and services provided or coordinated in connection with the dispensing of Specialty Products at a Participating Pharmacy will be billed to the Agency at the cost charged to Express Scripts for such ancillary supplies, equipment, and services provided or coordinated, unless such ancillary supplies, equipment, and services provided or coordinated are included in the ingredient cost of the Specialty Product.

(f) Notwithstanding the Specialty Product pricing terms set forth above, Express Scripts will guarantee an average aggregate annual ingredient cost discount for Specialty Product dispensed through Express Scripts Specialty Pharmacy as follows:

Type of Guarantee	ESI Specialty Pharmacy	Claims Excluded
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

⁽¹⁾AWP discount guarantee includes both the value of the ingredient cost discount and value for the Rebate amounts paid to the Agency pursuant to [Exhibit B-3](#).

Guarantees will be measured and reconciled on an annual basis within ninety (90) days of the end of each Agreement year. The above guarantees are annual guarantees – if this Agreement is terminated prior to the completion of the then current Agreement year (hereinafter, a “Partial Contract Year”), then the above guarantees will not apply for such Partial Contract Year. To the extent the Agency changes its benefit design or Formulary during the term of the Agreement, the guarantee will be equitably adjusted if there is a material impact on the discount achieved. If Express Scripts makes a proposed equitable adjustment, the Agency may validate Express Scripts’ proposed equitable adjustment with a third party consultant active in the pharmacy benefit industry. If, based on such third party consultant’s input, Agency does not agree with all or some of the terms and conditions of Express Scripts’ proposed equitable adjustment, then Express Scripts and Agency shall, acting in good faith, make commercially reasonable efforts to find a compromise position. If a compromise position is not achieved between the parties within sixty (60) days, and either party reasonably does not believe that a compromise position is achievable with continued discussions, then such party may submit such dispute to a third party mediator at its own cost. Subject to the remaining terms of this Agreement, Express Scripts will pay the difference attributable to any shortfall between the actual result and the guaranteed result; provided however, that Express Scripts may use an excess achieved in one or more of the above guarantees within a channel (with the channels being retail and mail, Specialty Products will be included in the channel from which they were dispensed) under this Agreement to make up for, and offset, a shortfall in any other guarantee within the same channel, excluding any Rebate guarantees, which will be reconciled and offset only against other Rebate guarantees.

Section VI. Vaccine Claims (No vaccine claims will be included in any pricing or rebate guarantees set forth in the Agreement).

(a) General Terms applicable to Vaccine Claims.

(i) Vaccine Claims shall adjudicate at the lower of U&C or the amounts shown in the table below. In the case of Vaccine Claims, the U&C shall be the retail price charged by a Participating Pharmacy for the particular vaccine, plus administration and dispensing fees, in a cash transaction on the date the vaccine is dispensed as reported to Express Scripts by the Participating Pharmacy.

(ii) The Vaccine Administration Fee for Vaccine Claims for EGWP Enrollees enrolled in the Agency's Medicaid programs, if any, will be capped at the maximum reimbursable amount under the state Medicaid program in which the EGWP Enrollee is enrolled.

(iii) All Vaccine Claims will be subject to any Administrative Fees set forth in the Agreement.

(iv) Vaccine Claims will be charged a program fee of [REDACTED] per Vaccine Claim (except for Medicare Part D covered Vaccine Claims, if applicable). The Vaccine Program Fee will be billed separately to Agency as part of the administrative invoice according to the billing frequency set forth in this Agreement.

(b) Medicare Part D Covered Vaccine Claims

Medicare Part D Vaccine Claims shall adjudicate at the lower of U&C or the amounts shown in the table below.

	Participating Pharmacies/Mail Service Pharmacy/ESI Specialty Pharmacy	EGWP Enrollee Submitted Vaccine Claims (excluding foreign claims)	Vaccine Claims Submitted Electronically by Physicians
<div>██████████</div> <div>██████████████████</div> <div>██████</div>	<div>██████████████████</div> <div>██████████████████████████████</div> <div>██████████████████</div>	<div>██████████████████████████████</div> <div>██████████████████████████████</div> <div>██████████████████████████████</div> <div>██████████████████</div> <div>██████████████████████████████</div> <div>██████████████████</div>	<div>██████████████████</div> <div>██████████████████████████████</div> <div>██████████████████</div>
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<div>██████████████████</div>	<div>██████████████████</div>	<div>██████████████████████████████</div> <div>██████████████████████████████</div>	<div>██████████████████</div>
<div>██████████</div> <div>██████████████</div> <div>██████</div>	<div>██████</div>	<div>██████</div>	<div>██████████████████████████████</div> <div>██████████████████████████████</div> <div>██████████████████████████████</div> <div>██████████████████████████████</div> <div>██████████████████████████████</div>

(c) Medicare Part B Covered Vaccine Claims

Medicare Part B covered Vaccine Claims shall adjudicate at the amounts shown in the table below.

	Participating Pharmacy INFLUENZA	Participating Pharmacy PNEUMONIA
██████████	██████████	██████████
██████████████████	██████████████████████████████	██████████████████████████████
████	██████████	██████████
██████████████████	██████████████████	██████████████████
██████████████████	██████████████████	██████████████████

Section VII. Other Providers: I/T/U, IHS, LTC, and Home Infusion.

Other Providers		I/T/U and IHS Providers	Long Term Care Providers	Home Infusion & Specialty Home Infusion
██████	██████	██████	██████	██████
	██████	██████	██████	██████
	██████	██████	██████	██████
██████	██████	██████	██████	██████
	██████	██████	██████	██████
	██████	██████	██████	██████

Section VIII. Generic Dispensing Rate Guarantee.

- (a) Express Scripts will guarantee that Generic Drugs will be dispensed from Participating Pharmacies and the Mail Service Pharmacy at the percentages reflected below:

Generic Drug Dispensing Rate Guarantee		
██████	██████	██████
█	██████	██████
█	██████	██████
█	██████	██████

- (b) The guarantees will be calculated as follows:

The total Participating Pharmacy Generic Prescription Drug Claims divided by total Participating Pharmacy Generic and Brand Prescription Drug Claims (and the same for Mail Service Pharmacy Prescription Drug Claims).

- (c) Express Scripts will pay a penalty for any shortfall between the actual percentage result and the guaranteed percentage for each of the Participating Pharmacy and Mail Service Pharmacy guarantees, respectively. If the actual Generic Drug dispensing percentage for a contract year is below the guaranteed percentage, the penalty will be calculated as the guaranteed Generic Drug dispensing percentage for the contract year minus the actual Generic Drug dispensing percentage for the contract year times the actual claims volume times the applicable Payment Factor below. Separate calculations will be performed for Participating Pharmacies and Mail Service Pharmacy and for each contract year.

Payment Factor		

(d) [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

Exhibit B-2

Administrative and Clinical Program Fees

I. Administrative Fees

Optional PBM Services

[illegible]

PDP Services

PDP Services	

Express Scripts' EGWP Plus administrative fee includes the following services:

Implementation
Implementation and support for up to one plan design Incremental Cost for implementing multiple plan designs -
Medicare Part D Formulary and Network Management
Contracting of retail, long term care, and home infusion networks to conform to CMS access requirements Establishment of a CMS approved Formulary and P&T Committee support Formulary management and change notification communications Administration of manufacturer rebate contracts in compliance with CMS requirements
Electronic Prescribing
Electronic Prescribing – Core Services
Claims Processing
Electronic Claims Processing
Enrollment Management
Electronic Eligibility submission Initial enrollment, age-in members, low-income management Eligibility/Enrollment status reporting
Home Delivery Services
Processing and delivery of prescriptions received via Internet, fax, phone or mail Prescription Delivery - Standard Therapeutic Resource Center services where appropriate Mail Programs where appropriate Participation in Mail Marketing Programs where appropriate Refill orders received by phone or Internet 24 hours a day, 7 days a week Handling and postage expense of mail-order prescriptions. If postage rates (i.e., U.S. mail and/or applicable commercial courier services) increase during the term of this Agreement, the Dispensing Fee will be increased to reflect such increase(s) Braille prescription labels for visually impaired Communication/educational materials included in medication packages: <ul style="list-style-type: none"> • Summary statement of benefit account • Drug Information Leaflet with each new prescription • Buck slips highlighting benefit components • Pre-addressed pharmacy order form/envelope • Refill or renewal form (when appropriate)

Specialty Pharmacy Services
<p>Clinical support, including:</p> <ul style="list-style-type: none"> • Patient tele-counseling from specially trained pharmacists and nurses • Care management including information and support directly to the patient • Coordination of care with the patient's case manager and/or home care agency • Specialty drug educational materials and product information <p>Toll-free telephone line for members using specialty drugs</p> <p>Ancillary supplies (such as needles and syringes) provided with self-inject able medications</p> <p>Logistics coordination of delivery to patient's home or physician's office</p> <p>Express delivery to physician's office or patient's home</p> <ul style="list-style-type: none"> • Standard two-day delivery • Overnight delivery if required by physician (excluding Sundays) <p>Comprehensive drug utilization management review applied to specialty pharmacy related medical and prescription claims</p> <p>Enhanced physician services including communication materials, forms, informational hotline</p> <p>Analysis of integrated pharmacy and medical claims databases to identify persons using specialty medications.</p> <p>Targeted communications, including:</p> <ul style="list-style-type: none"> • An initial mailing upon enrollment notifying members of the change in plan coverage; • Follow-up mailings and outbound phone calls notifying members of their eligibility for services from the specialty pharmacy <p>Additional services available:</p> <p>Mailings direct to members, physicians or plan location - Quoted Upon Request</p>
Medicare Processing and Reporting Services
Interaction with CMS and federal agencies to ensure compliance and applicable laws
Manage contact with CMS
<p>Evaluate actuarial equivalence upon request</p> <p>Processing, reconciliation, and reporting of CMS Direct Subsidy, CMS Low-Income Premium and Cost-Sharing, Coverage Gap Discount Payments, and CMS Catastrophic Reinsurance (subject to plan design)</p> <p>LIS Premium Refund Service</p> <p><i>Subsidies will only be received on behalf of members approved by CMS as eligible for the PDP. Any member rejected by CMS will not be eligible for any of the subsidies outlined above. To the extent that CMS, for any reason, re-opens a reconciliation window with the PDP, the PDP has the right to re-open reconciliation with the client for any of the above subsidies</i></p> <p>Client management and financial reporting</p> <p>Preparation of all data necessary to meet Medicare Part D Reporting Requirements</p> <p>Development and transmission of applicable files to CMS as part of program administration</p> <p>All CMS reporting requirements related to rebates, network access, TrOOP, clinical program management, claims administration, operational compliance, and other reports as required by CMS</p> <p>Maintenance and support of CMS "Prescription Drug Event" (claim) process</p> <ul style="list-style-type: none"> • Maintenance and distribution of PDE files • Process to manage CMS responses • Resolution of PDE rejects <p>Support of up to one regulatory audit CMS might perform on behalf of [Client] if applicable</p>

Website
<p>Express-Scripts.com for Clients & Advisors — access to:</p> <ul style="list-style-type: none"> • Reporting tools • Eligibility Member status reporting • Contact directory • Sales and marketing information • Benefit and enrollment support secured through Risk Base Authentication <p>Express-Scripts.com for EGWP Enrollees — access to</p> <ul style="list-style-type: none"> • Benefit, drug, health and wellness information • Prescription ordering capability • Customer service
Account and EGWP Enrollee Service
<p>Assigned account team</p> <p>Annual pharmacy benefit strategic planning with quarterly review</p> <p>Medicare Call-Center Services including support for client’s open enrollment (open enrollment support is dependent on Agency submitting benefit information within the required timeframe for support)</p> <p>Grievance management</p> <p>Centralized administration for payment of claim and administrative fees</p> <p>Training for online tools</p> <p>Care and Safety Management Education</p>

EGWP Enrollee Communications
<p>Development of communication templates, customer service scripting, and other communication tools</p> <p>Development of template language to be included in open enrollment materials</p> <p>Mailing of Medicare required member communications, as applicable.</p> <ul style="list-style-type: none"> • Pre-notification Letters (Including benefit overview) <p>New Enrollee Packets</p> <ul style="list-style-type: none"> • EGWP Enrollee ID card • Quick Reference Guide • Welcome Letter • Benefit Overview • Evidence of Coverage (EOC) • Formulary Guidebook • Pharmacy Locator Notice • HIPAA Notice • Home Delivery Order Form <p>On-Going</p> <ul style="list-style-type: none"> • Transition Supply Letters • Explanation of Benefits (EOBs) • Medication Therapy Management (MTM) Letters • Coverage Determination Letters • Grievance and Appeals Letters • Low Income Subsidy (LIS) Riders • Late Enrollment Penalty (LEP) Attestation Letters • Enrollment/Disenrollment Letters • 60 Day Formulary Notification Letters • Other CMS required notifications <p>Renewal EGWP Enrollee Packet</p> <ul style="list-style-type: none"> • Annual Notice of Changes (ANOC) • Evidence of Coverage (EOC) • Formulary Guidebook • Home Delivery Order Form
Clinical Services
<p>Concurrent Drug Utilization Reporting (DUR)</p> <p>Retrospective DUR</p> <p>Medication Therapy Management and reporting</p> <p>Fraud, Waste, and Abuse Program</p> <p>CMS Approved Utilization Management Programs including Drug Quantity Management, Prior Authorization, and Step Therapy</p>
Participating Pharmacies
<p>Pharmacy Audit</p> <p>Pharmacy Help Desk</p> <p>Pharmacy Network Management</p> <p>Network Development Upon Request</p> <p>Pharmacy Reimbursement</p>

SECTION II. Clinical/Trend Programs (Optional).

This Section requires written agreement of the Agency in order for Express Scripts to exercise any options listed in this Section. Express Scripts offers a comprehensive suite of trend and integrated health management programs. With a 360-degree view of the patient, Express Scripts promotes changes that maximize health outcomes and value – reducing prescription waste, enabling better overall health and value, enriching the care continuum and managing medication therapy and safety. These offerings may change or be discontinued from time to time as Express Scripts updates its offerings to meet the needs of the marketplace.

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REBATES

A. Subject to the terms and conditions set forth below and in the remainder of the Agreement, Express Scripts will remit to the Agency an amount equal to the greater of:

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- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

A. Subject to the terms and conditions set forth below and in the remainder of the Agreement, Express Scripts will remit to the Agency an amount equal to the greater of:

- Exhibit B-3 Page 1

excesses achieved in other guarantees offered pursuant to this Agreement. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

EXHIBIT C

ADDITIONAL TERMS AND CONDITIONS

SECTION I. Plan Status Under Applicable Laws; Enrollment and Disenrollment in the EGWP Benefit

1.1 Medicare Part D. Agency and Express Scripts acknowledge and agree as follows:

(a) Under the Medicare Drug Rules, the EGWP Benefit will be deemed to be an EGWP administered by Express Scripts, and each EGWP Enrollee will be deemed to be a Part D enrollee of Express Scripts who is covered by the EGWP Benefit.

(b) The design of and administration of the EGWP Benefit is subject to the applicable requirements of the Medicare Drug Rules. Agency shall cooperate with Express Scripts and, upon Express Scripts' request, do, execute, acknowledge, deliver, and provide such further acts, reports, information, and instruments as may be reasonably required or appropriate to administer the EGWP Benefit in compliance with the Medicare Drug Rules, applicable state insurance laws and other applicable laws.

(c) If the number of Agency's Part D Eligible Retirees is materially reduced or eliminated for any reason, Express Scripts may communicate with those persons at Express Scripts' expense regarding alternative Medicare Part D options, including alternative Medicare Part D services offered by Express Scripts or one or more of its Affiliates, and the program pricing terms hereunder may be equitably modified by Express Scripts to reflect the reduction or elimination of the number of Part D Eligible Retirees.

1.2 ERISA. The Agency and Express Scripts acknowledges and agree that, the Agency's plan is a governmental plan and in providing services under this Agreement and administering the EGWP Benefit, neither Express Scripts nor any of Express Scripts' Affiliates is acting as a fiduciary (as defined in Section 3.21(a) of ERISA) of the TRB Group Health Plan. Thus the Agency shall not name Express Scripts or any of Express Scripts Affiliates as a fiduciary under ERISA. Neither Express Scripts nor any of Express Scripts' Affiliates have nor shall have any power to make any decisions as to the TRB Group Health Plan's policy, interpretations, practices or procedures, but rather provides ministerial services within a framework of policies, guidelines, interpretations, rules, practices, and procedures, which are chosen by Agency consistent with the provisions established by CMS. Agency acknowledges that neither Express Scripts nor any of Express Scripts' Affiliates have nor shall have any discretionary authority or control respecting management of the TRB Group Health Plan, nor exercise any authority or control respecting management or disposition of the plan assets of the Agency's Group Health Plan, if any exist. Agency further acknowledges that all such discretionary authority with respect to the TRB Group Health Plan is retained by Agency or some other person or entity as designated in writing by Agency to act with such discretionary authority.

1.3 HIPAA. The Agency, the TRB Group Health Plan, and Express Scripts agree to take reasonable and necessary actions to safeguard the privacy and security of information

that identifies a particular EGWP Enrollee in accordance with state and federal privacy and security requirements, including HIPAA and the confidentiality and security provisions stated in 42 C.F.R. §423.136. Without limiting the generality of the foregoing, the parties acknowledge that, for the purposes of HIPAA compliance, each of Express Scripts and the TRB Group Health Plan is a Covered Entity, and that, with respect to the EGWP Benefit, Express Scripts and the TRB Group Health Plan shall be deemed to be an Organized Health Care Arrangement. Express Scripts and the TRB Group Health Plan may transmit and receive PHI as necessary for the operation of the EGWP Benefit. In addition, Express Scripts may transmit PHI to the TRB Group Health Plan for payment purposes and any other purpose permitted by HIPAA.

The Agency hereby represents and warrants that: (i) the TRB Group Health Plan's documents have been amended to meet the specification requirements set forth at 45 C.F.R. §164.504(f); (ii) The Agency will use and disclose PHI solely in accordance with these provisions; and (iii) accordingly, Express Scripts, at the direction of the TRB Group Health Plan, may disclose PHI to the Agency consistent with the terms of this Section 1.3. The parties shall take reasonable steps to ensure that all uses and disclosures of PHI by Express Scripts, the TRB Group Health Plan and the Agency only include information that is minimally necessary to accomplish the purpose(s) of the use or disclosure. Capitalized terms used in this Section 1.3 and not otherwise defined in this Agreement shall have the meaning set forth in HIPAA. Express Scripts may use and disclose both during and after the term of this Agreement the anonymized claims data (de-identified in accordance with HIPAA) including drug and related medical data collected by Express Scripts or provided to Express Scripts by the Agency for research; provider profiling; benchmarking, drug trend, and cost and other internal analyses and comparisons; clinical, safety and/or trend programs; ASES; or other Express Scripts business purposes, in all cases subject to applicable law.

1.4 Group Enrollment. Subject to each individual's right to opt out, as described below, the Agency shall enroll Part D Eligible Retirees in the EGWP Benefit through a group enrollment process, as further described in and permitted under the Medicare Drug Rules. The Agency agrees that it will comply with all applicable requirements for group enrollment in EGWPs as set forth in the Medicare Drug Rules and related CMS guidance, and as described and required by Express Scripts' policies and procedures.

1.5 Enrollment File. No later than twenty five (25) days prior to the Effective Date and the fifth day of each EGWP Benefit enrollment period thereafter, so long as this Agreement is in effect, the Agency shall provide an Enrollment File to Express Scripts via the communication medium agreed to by the parties Express Scripts that lists those Part D Eligible Retirees for whom the Agency intends to make application for enrollment in the EGWP Benefit (i.e., those Part D Eligible Retirees who have not opted out of the group enrollment process) for that contract year. The Agency represents and warrants that all information it provides to Express Scripts in the Enrollment File will be complete and correct. The Agency shall communicate all new enrollments (i.e., individuals who become eligible to participate in the EGWP Benefit outside of an annual election period), requested retroactive enrollments of Part D Eligible Retirees, and disenrollments from the EGWP Benefit via the communication medium reasonably agreed to by the parties. Express

Scripts agrees to process retroactive enrollment requests pursuant to the requirements of the Medicare Drug Rules.

1.6 Implementation.

(a) Express Scripts' Responsibilities. Express Scripts shall implement the Enrollment File following confirmation of the eligibility of the Part D Eligible Retirees listed on the Enrollment File with CMS eligibility files. A Part D Eligible Retiree will not be enrolled in the EGWP Benefit unless such individual is listed on both the Enrollment File submitted by the Agency and the CMS eligibility files. If an individual is listed on the Enrollment File provided by the Agency, but is not eligible for participation according to CMS eligibility files, then Express Scripts shall notify the Agency in a timely manner regarding such individual's ineligibility. Express Scripts will work with the Agency to determine if such individual has been rejected due to an administrative or clerical error (e.g., data field standards errors, rejections related to information input by Express Scripts related to the EGWP Benefit into the CMS system, etc.), or an error requiring individual retiree contact, and if so in either case, Express Scripts will take appropriate action and attempt to correct such error and resubmit the individual through the CMS system. The Agency acknowledges and agrees that Express Scripts may update the Enrollment File any and all information concerning Part D Eligible Retirees upon receipt of corrected information from CMS, and Express Scripts may use such corrected information to obtain a Part D Eligible Retiree's enrollment in the EGWP Benefit. For all Part D Eligible Retirees that have been included by the Agency in the Enrollment File, but who are ultimately determined to be ineligible for participation in the EGWP Benefit, Express Scripts or its Affiliate shall notify the individual of his or her ineligibility in the EGWP Benefit and take all other action as required by applicable law. Express Scripts shall communicate to the Agency any changes to a Part D Eligible Retiree's information in the Enrollment File based upon updates or corrections received from CMS.

(b) Incomplete Enrollment File Information. The Agency's submission to Express Scripts of an inaccurate or incomplete Enrollment File (e.g., missing date of birth, last name, first name, etc.) or otherwise of incomplete information with respect to any individual Part D Eligible Retiree may result in a rejection of the Part D Eligible Retiree's enrollment in the EGWP Benefit. Express Scripts will provide the Agency with regular reports providing the details of all such incomplete information needed to enroll Part D Eligible Retirees. The Agency acknowledges and agrees that Express Scripts may contact the Agency's Part D Eligible Retirees to obtain the information required hereunder and that Express Scripts will update the Enrollment File on the Agency's behalf to reflect additional information needed to complete enrollment of the Part D Eligible Retirees in the EGWP Benefit. If Express Scripts, using reasonable efforts, is not able to obtain all missing information from a Part D Eligible Retiree within twenty-one (21) days after receiving the Agency's initial request for enrollment of the Part D Eligible Retiree in the EGWP Benefit, then the Agency's request shall be deemed cancelled and Express Scripts or its Affiliate shall notify the individual of his or her non-enrollment in the EGWP Benefit and shall take all other action as required by applicable law.

(c) Effective Date of Application for Enrollment into EGWP Benefit. Notwithstanding any provision of this Agreement to the contrary, the effective date of the

application for any Part D Eligible Retiree who Express Scripts seeks to enroll in the EGWP Benefit hereunder shall be the date on which the application for enrollment is entered by Express Scripts into its enrollment system, who certifies that they will use all due diligence to quickly and accurately update the enrollment, subject however to any adjustments that Express Scripts may make for retroactive enrollments as necessary to enroll the Part D Eligible Retiree in the EGWP Benefit.

1.7 Individual Disenrollment. If the Agency determines that an EGWP Enrollee is no longer eligible to participate as an EGWP Enrollee in the EGWP Benefit for reasons such as loss of Agency's eligibility or residence outside of the service area (an "Ineligible Enrollee"), the Agency shall notify Express Scripts at least twenty-five (25) days before disenrollment effective date. Such Ineligible Enrollee shall be notified about involuntary disenrollment and disenrolled in accordance with the Medicare Drug Rules. If CMS determines that an EGWP Enrollee is no longer eligible to participate as an EGWP Enrollee in the EGWP Benefit, upon notification to Express Scripts, such Ineligible Enrollee shall be notified and disenrolled in accordance with the Medicare Drug Rules.

1.8 Group Disenrollment. If, upon the expiration of the then current term of this Agreement, the Agency plans to disenroll its EGWP Enrollees from the EGWP Benefit using a group disenrollment process, then the Agency shall implement the following procedures:

(a) Notification to EGWP Enrollees. The Agency shall provide at least twenty-one (21) days (or such other minimum days notice as required by the Medicare Drug Rules) prior written notice to each EGWP Enrollee that the Agency plans to disenroll him or her from the EGWP Benefit and shall include with such written notification an explanation as to how the EGWP Enrollee may contact CMS for information on other Medicare Part D options that might be available to the EGWP Enrollee; and

(b) Information to Express Scripts. The Agency shall provide all the information to Express Scripts that is required for Express Scripts to submit a complete disenrollment request transaction to CMS, as set forth in the Medicare Drug Rules.

1.9 Voluntary Disenrollment. If an EGWP Enrollee makes a voluntary request to be disenrolled from the EGWP Benefit (the "Voluntary Disenrollee") to the Agency, then the Agency shall notify Express Scripts at least sixty (60) days prior to the effective date of such Voluntary Disenrollee's disenrollment, in a manner and format agreed upon by the parties. If the Agency does not timely notify Express Scripts of such Voluntary Disenrollee's disenrollment in the EGWP Benefit, then Express Scripts shall submit a retroactive disenrollment request to CMS. The Agency acknowledges that CMS may only grant up to a ninety (90) day retroactive disenrollment in such instances. If the Voluntary Disenrollee makes his or her request directly to Express Scripts, then Express Scripts shall direct the Voluntary Disenrollee to initiate the disenrollment with the Agency.

1.10 Responsibility for Claims After Loss of Eligibility or Disenrollment. Except for Prescription Drug Claims that are paid due to Express Scripts' negligence, the Agency shall be responsible for reimbursing Express Scripts pursuant to Exhibit B for all Prescription Drug Claims processed by Express Scripts: (a) with respect to an Ineligible

Enrollee during any period in which the Enrollment File indicated that such Ineligible Enrollee was eligible; and (b) with respect to a Voluntary Disenrollee, in the event the Agency did not provide timely notice to Express Scripts of such disenrollment as set forth in this Section I.

1.11 Other Coverage. Except as expressly provided in this Agreement, the parties acknowledge that the Agency shall be responsible for determining the eligibility of EGWP Enrollees for the “wrap” portion of the benefit, as communicated by the Agency to Express Scripts in the eligibility files. Additionally, by requesting a EGWP Enrollee’s enrollment as an EGWP Enrollee in the EGWP Benefit, Client represents that such EGWP Enrollee’s eligibility in any other plan sponsored by the Agency, including any commercial or active employee coverage, shall immediately terminate (or has already terminated). An EGWP Enrollee may not have dual coverage under the EGWP Benefit and the commercial benefit, if any.

1.12 Retroactive Payments / Enrollment and Disenrollment. Express Scripts may receive or recoup payments from CMS based upon retroactive enrollments to the EGWP Benefit or retroactive disenrollments from the EGWP Benefit under this Agreement. To the extent Express Scripts has agreed in this Agreement to pay the Agency amounts equal to such payments, Express Scripts shall pay such amounts to the Agency within forty-five (45) days of Express Scripts’ receipt of payments from CMS; provided, further, that any related PMPM Fees (as defined in Exhibit B) associated with the retroactive enrollment or disenrollment, as the case may be, shall be adjusted in accordance with the applicable terms of this Agreement.

SECTION II. Prescription Drug Services

2.1 Exclusivity. The Agency acknowledges and agrees that, in the event the Agency offers its Part D Eligible Retirees more than one Part D benefit option, the eligibility determinations, enrollment and disenrollment and other administration of such Part D options will require extensive coordination with the administration of the EGWP Benefit. For these reasons, the Agency agrees that the Agency shall use Express Scripts as the Agency’s exclusive provider of all Medicare Part D services for its Part D Eligible Retirees during the term of this Agreement. The terms and conditions of Agency’s and Express Scripts’ arrangements for Part D options other than the EGWP Benefit shall be set forth in separate agreements.

2.2 Prescription Drug Services. In exchange for the fees set forth in Exhibit B, Express Scripts will administer the EGWP Benefit for EGWP Enrollees in accordance with the terms and conditions of this Agreement. Such administrative services will include: pharmacy network contracting; Mail Service Pharmacy and Specialty Products services; Prescription Drug Claim processing; Formulary and Rebate administration; Medication Therapy Management; services cost containment, clinical, safety, adherence, and other like programs (collectively, “Prescription Drug Services”). All Prescription Drug Services shall be provided by Express Scripts in accordance with the Medicare Drug Rules and the terms of the EGWP Benefit. The Agency acknowledges and agrees that Express Scripts may provide Prescription Drug Services under this Agreement through one or more of its Affiliates. Express Scripts will have written agreements that are consistent with the terms

of this Agreement with each Affiliate that will perform services on behalf of Express Scripts in connection with the EGWP Benefit that meet the requirements the Medicare Drug Rules for subcontractors of PDP Sponsors.

2.3 Non Medicare Part D Claims. Claims which are covered under the Agency's plan design, as indicated on the Set-up forms, outside of the Medicare Part D coverage will be billed to Agency at the same prices and upon the other terms set forth herein (with pricing set forth at Exhibit B) but will not be subject to the Medicare part D rules, except as noted.

2.4 The EGWP Benefit. The EGWP Benefit will satisfy all actuarial equivalence standards set forth in the Medicare Drug Rules. Agency hereby agrees to cooperate with Express Scripts to perform the necessary actuarial equivalence calculations to determine whether the EGWP Benefit meets the foregoing actuarial equivalence standards prior to the Effective Date. If Express Scripts determines that the EGWP Benefit does not meet the actuarial equivalence standards, then Agency shall cooperate with Express Scripts to make necessary adjustments to the EGWP Benefit design to meet the actuarial equivalence standards.

2.5 Changes to the EGWP Benefit. Agency shall have the right to request changes to the terms of the EGWP Benefit from time to time by providing written notice to Express Scripts. Express Scripts shall implement any such requested changes, subject to the following conditions: (a) all changes to the EGWP Benefit must be consistent with the Medicare Drug Rules; (b) the EGWP Benefit, after implementation of such changes, must continue to meet the actuarial equivalence standards referenced in Section 2.3 above; (c) EGWP Benefit changes may be implemented only at times and in the manner permitted by the Medicare Drug Rules; and (d) any requested change that would change Express Scripts' costs of administering the EGWP Benefit without an equivalent change in reimbursement to Express Scripts from Agency shall not be implemented unless and until Agency and Express Scripts agree in writing upon a corresponding amendment to the reimbursement terms of this Agreement.

2.6 EGWP Enrollee Communications. All standard EGWP Enrollee communications concerning the EGWP Benefit (e.g., benefit overview document, formulary booklet, etc.) shall be mutually developed by Express Scripts and the Agency pursuant to the Medicare Drug Rules, including the CMS Marketing Guidelines contained therein. Pursuant to the Medicare Drug Rules, Express Scripts must ensure all such EGWP Enrollee communications, whether created and/or distributed by either the Agency or Express Scripts, are CMS compliant, and provide such to CMS upon request. If CMS notifies Express Scripts that any such EGWP Enrollee communication is deficient, the Agency agrees to assist Express Scripts to make necessary revisions to correct such deficiency.

2.7 Pharmacy Network. Express Scripts will maintain a network(s) of Participating Pharmacies, and will make available an updated list of Participating Pharmacies on-line. Pharmacy Network will at a minimum, be sufficient to meet the needs of the EGWP Enrollees as required pursuant to the Medicare Drug Rules. Neither Express Scripts nor its Affiliate own, direct or exercise any control over the Participating Pharmacies or the professional judgment exercised by any pharmacist in dispensing prescriptions or otherwise providing pharmaceutical related services at a Participating Pharmacy. To the

extent Express Scripts or its Affiliate own the Participating Pharmacies, Express Scripts shall be responsible for the actions of such Participating Pharmacy in dispensing prescriptions or otherwise providing pharmaceutical related services at a Participating Pharmacy.

Express Scripts shall have no liability to Agency, any EGWP Enrollee or any other person or entity for any act or omission of any Participating Pharmacy or its agents or employees. If, due to an access concern, and upon Agency's written request to add a particular retail pharmacy to the network of Participating Pharmacies servicing Agency and its Enrollees, Express Scripts will make commercially reasonable efforts to add any such retail pharmacy to the Participating Pharmacy network for Agency, provided that such pharmacy meets Express Scripts' network participation requirements and agrees to Express Scripts' standard terms and conditions. If Express Scripts pays any such Participating Pharmacy a higher rate than Express Scripts' standard network rate (i.e. the particular pharmacy will only agree to higher than standard reimbursement rates), and Agency nevertheless requests that Express Scripts add such pharmacy, the rate charged to Agency for Prescription Drug Claims processed through such pharmacy (assuming Express Scripts agrees to contract with such pharmacy) will be the net ingredient cost plus the dispensing fee paid by Express Scripts to such Participating Pharmacy (plus applicable sales or excise tax or other governmental surcharge, if any). All such Prescription Drug Claims will be excluded from the pricing guarantees set forth in Exhibit B.

2.8 Audits of Participating Pharmacies; Fraud and Abuse. Express Scripts shall periodically audit Participating Pharmacies to determine compliance with their agreements with Express Scripts or its Affiliate and in order to meet the anti-fraud provisions of the Medicare Drug Rules applicable to PDPs. Express Scripts also shall perform fraud and abuse reviews of EGWP Enrollees and physicians as required under the Medicare Drug Rules for PDPs. The audits and reviews may be conducted by Express Scripts' or its Affiliate's internal auditors or its outside auditors, and at the pharmacy or at Express Scripts by a review of electronically transmitted claims. Any balance of recovered overpayments will be credited to Agency on the next billing cycle after the correction. Express Scripts shall attempt recovery of identified overpayments through offset, demand or other reasonable means. Express Scripts shall not be required to institute litigation to collect any overpayments, but shall cooperate with Agency in the event Agency elects to pursue litigation.

2.9 Mail Service Pharmacy. EGWP Enrollees may have prescriptions filled through the Mail Service Pharmacy. Subject to applicable law Express Scripts may communicate with EGWP Enrollees regarding benefit design, cost savings, availability and use of the Mail Service Pharmacy, as well as provide supporting services. Express Scripts may suspend Mail Service Pharmacy services to an EGWP Enrollee who is in default of any Copayment amount due Express Scripts.

2.10 Claims Processing. Subject to the terms of this Agreement, Express Scripts will perform claims processing services for Covered Drugs dispensed to EGWP Enrollees by Participating Pharmacies, Mail Service and Express Scripts Specialty Pharmacy consistent with the applicable standard transaction rules required under HIPAA. The "per Rx" administrative fees set forth in Exhibit B shall be charged for all claims processing

services, including initial, rejected, reversed and reprocessed Prescription Drug Claim processing. If elected by Agency, Express Scripts also shall process EGWP Enrollee Submitted Claims in accordance with the rules in the Set-Up Forms and Express Scripts' standard procedures.

(a) Application of Discounts. Prescription Drug Claims will be processed based on the rates set forth in Exhibit B, including Prescription Drug Claims for which no benefits are payable to the EGWP Enrollee for Covered Drugs because of the application of any deductible or 100% co-insurance requirement following satisfaction of any initial coverage limit consistent with the Medicare Drug Rules.

(b) COB. Express Scripts will coordinate benefits with state pharmaceutical assistance programs and entities providing other prescription drug coverage consistent with the Medicare Drug Rules. Express Scripts will perform the following additional coordination of benefits with Agency's EGWP supplemental coverage: Coordination of benefits for Medicare Part D applicable drugs throughout the EGWP Benefit and the EGWP supplemental coverage; single transaction for EGWP Enrollees at POS utilizing Medicare Part D eligibility and a single ID card; utilize EGWP Enrollee eligibility established under Medicare Part D plan; comprehensive EGWP Enrollee communications package on the EGWP supplemental coverage; all CMS required reporting; claims reporting detailing primary and secondary payments; and financial reporting detailing application of Coverage Gap Discount Program.

(c) Utilization Management. Consistent with the terms of the EGWP Benefit, Express Scripts will establish a reasonable and appropriate drug management program that includes incentives to reduce costs when medically appropriate; maintains policies and systems to assist in preventing over-utilization and under-utilization of prescribed medications, according to guidelines specified by CMS and in accordance with the Medicare Drug Rules. Further, in connection with each prescription submitted for processing on-line by a Participating Pharmacy, Express Scripts will perform standard drug utilization review ("DUR") in order to assist the dispensing pharmacist and prescribing physician in identifying potential drug interactions, incorrect prescriptions or dosages, and certain other circumstances that may be indicative of inappropriate prescription drug usage. Express Scripts' DUR processes are not intended to substitute for the professional judgment of the prescriber, the dispensing pharmacist or any other health care professional providing services to the EGWP Enrollee.

(d) Quality Assurance. Consistent with the terms of the EGWP Benefit, Express Scripts will establish quality assurance measures and systems to reduce medication errors and adverse drug interactions and improve medication use in accordance with the Medicare Drug Rules.

(e) TrOOP. Consistent with the terms of the EGWP Benefit, Express Scripts will establish and maintain a system to record EGWP Enrollees' TrOOP balances, and shall communicate TrOOP balances to EGWP Enrollees upon request.

(f) Coverage Determinations and Appeals. The parties acknowledge and agree that Express Scripts is required under the Medicare Drug Rules to maintain oversight of

coverage determinations under the EGWP Benefit, including prior authorizations and EGWP Enrollee Submitted Claims determinations, and to maintain an appeals process for EGWP Enrollees. Agency acknowledges and agrees that Express Scripts may perform such services through the UM Company. Express Scripts or the UM Company, as applicable, will be responsible for conducting the appeal in a manner consistent with the requirements of the Medicare Drug Rules and shall ensure that the contract with the UM Company complies with the applicable delegation requirements of the Medicare Drug Rules, including without limitation 42 C.F.R. §423.505. Express Scripts represents to Agency that UM Company has contractually agreed that: (A) UM Company will conduct appeals in accordance with the Medicare Drug Rules and the EGWP Benefit, (B) Agency is a third party beneficiary of UM Company's agreement with Express Scripts or its Affiliate (a copy of which is available upon request) and the remedies set forth therein, and (C) UM Company will indemnify the Agency for third party claims caused by the UM Company's negligence or willful misconduct in providing the appeal services.

(g) EOBs. Express Scripts will furnish EGWP Enrollees, in a manner specified by CMS, a written or electronic explanation of benefits ("EOB") when prescription drug benefits are provided under qualified prescription drug coverage consistent with the requirements of the Medicare Drug Rules.

(h) EGWP Enrollee Services. Express Scripts will provide 24-hours a day, 7-days a week toll-free telephone, IVR and Internet support to assist Agency and EGWP Enrollees with EGWP Enrollee eligibility, benefits and TrOOP verification, location of Participating Pharmacies and other related EGWP Enrollee concerns.

(i) Prior Authorization. For the fees set forth in the Clinical Programs described in Exhibit B-2 (if applicable), Express Scripts will provide prior authorization ("PA") services as specified and directed by the Agency for drugs designated on the Set-Up Form. Prior authorized drugs must meet Agency-approved guidelines ("Guidelines") before they are deemed to be Covered Drugs. Unless the Agency otherwise directs, the Agency hereby authorizes coverage for an otherwise excluded use in the event of comorbidities, complications and other factors not otherwise expressly set forth in the Guidelines, unless the Agency directs that the Agency be provided such issue for determination. In determining whether to authorize coverage of such drug under the PA Program, Express Scripts will apply only the Guidelines and may rely entirely upon information about the EGWP Enrollee and the diagnosis of the EGWP Enrollee's condition provided to it from the prescriber. Express Scripts will not undertake to determine medical necessity, make diagnoses or substitute Express Scripts' judgment for the professional judgment and responsibility of the physician prescriber.

2.11 Formulary and Medication Management.

(a) P&T Committee and Medicare Formulary. Express Scripts and/or its Affiliate will maintain a pharmacy and therapeutics committee ("P&T Committee") in accordance with the Medicare Drug Rules, which will develop a Medicare Formulary to be selected by Agency for the EGWP Benefit consistent with the requirements of the Medicare Drug Rules. In accordance with the Medicare Drug Rules, all Covered Drugs on the Medicare Formulary shall be Part D drugs (within the meaning of the Medicare

Drug Rules) or otherwise permitted to be covered by a PDP under the Medicare Drug Rules. The Agency acknowledges and agrees that the Medicare Formulary may not be modified by removing Covered Drugs, adding additional utilization management restrictions, making the cost-sharing status of a drug less beneficial or otherwise modified in a manner not consistent with the Medicare Drug Rules.

(b) Medication Therapy Management. Consistent with the terms of the EGWP Benefit and for the fees identified on Exhibit B, Express Scripts or its Affiliate will implement a Medication Therapy Management program that is designed to ensure that Covered Drugs prescribed to targeted EGWP Enrollees are appropriately used to optimize therapeutic outcomes through improved medication use; and reduce the risk of adverse events, including adverse drug interactions, in accordance with the Medicare Drug Rules.

2.12 Medicare Rebate Program.

(a) Express Scripts or its Affiliate will negotiate with pharmaceutical manufacturers regarding the terms of the Medicare Rebate Program and will, on its own behalf, enter into agreements with such manufacturers for Rebates for certain Covered Drugs. Express Scripts will pay to Agency the amounts as set forth on Exhibit B-3, subject to the following:

(i) Agency's election of, and conformance to, the Medicare Formulary identified on Exhibit B and applicable benefit designs;

(ii) Distribution of the Medicare Formulary (or a summary thereof) to EGWP Enrollees and/or physicians, as applicable; and

(iii) Agency's compliance with other reasonable, generally applicable requirements for participation in the Medicare Rebate Program for the EGWP Benefit.

(b) Agency acknowledges that it may be eligible for Rebate amounts under this Agreement only so long as Agency, its affiliates, or its agents do not contract directly or indirectly with anyone else for discounts, utilization limits, rebates or other financial incentives on pharmaceutical products or formulary programs for claims processed by Express Scripts pursuant to this Agreement, without the prior written consent of Express Scripts. In the event that Agency negotiates or arranges with a pharmaceutical manufacturer for Rebates or similar discounts for any Covered Drugs hereunder, Express Scripts may immediately withhold any Rebate amounts earned by, but not yet paid to, the Agency as necessary to prevent duplicative rebates on Covered Drugs. To the extent Agency knowingly negotiates and/or contracts for discounts or rebates on claims for Covered Drugs without prior written approval of Express Scripts, such activity shall be deemed to be a material breach of this Agreement, entitling Express Scripts to suspend payment of Rebate amounts hereunder and to renegotiate the terms and conditions of the Agreement.

(c) On at least an annual basis, and as otherwise required under the Medicare Drug Rules, Express Scripts shall disclose to Agency the amount of all Rebates received

from Manufacturers or otherwise retained by Express Scripts or its Affiliate with respect to the Rebate eligible EGWP Benefit utilization. The Agency and Express Scripts shall coordinate disclosure to CMS of all Rebates and, if applicable, reported to Agency by Express Scripts in connection with any Medicare utilization to the extent required by the Medicare Drug Rules.

(d) Under its Rebate program, Express Scripts may implement Express Scripts' Formulary management programs and controls, which may include, among other things, cost containment initiatives, and communications with EGWP Enrollees, Participating Pharmacies, and/or physicians. Express Scripts reserves the right to modify or replace such programs from time to time. Guaranteed Rebate amounts, if any, set forth herein, are conditioned on adherence to various Formulary management controls, benefit design requirements, claims volume, and other factors stated in the applicable pharmaceutical manufacturer agreements, as communicated by Express Scripts to Agency from time to time. If any government action, change in law or regulation, change in the interpretation of any law or regulation, or any action by a pharmaceutical manufacturer has an adverse effect on the availability of Rebates, then Express Scripts and may make an equitable adjustment to the Rebate terms and guaranteed Rebate amounts, if any, hereunder solely to the extent necessary to maintain the parties' relative economic position.

(e) Rebate paid to Agency pursuant to this Agreement are intended to be treated as "discounts" pursuant to the federal anti-kickback statute set forth at 42 U.S.C. §1320a-7b and implementing regulations. Agency is obligated if requested by the Secretary of the United States Department of Health and Human Services, or as otherwise required by applicable law, to report the Rebate amounts and to provide a copy of this notice. Express Scripts will refrain from doing anything that would impede Agency from meeting any such obligation.

2.13 Late Enrollment Penalty. The Agency agrees to and attests that it shall comply with the applicable CMS requirements of the LEP and shall comply with Express Scripts' LEP policy, including participating with Express Scripts in the following process:

(a) The Agency has an option to: (i) provide an initial global attestation to Express Scripts to attest to a creditable coverage for all of its EGWP Enrollees; or (ii) periodically provide an attestation to Express Scripts to attest to a creditable coverage for its EGWP Enrollees listed on the LEP report periodically provided to Agency by Express Scripts.

(b) If the Agency elects to periodically attest to Express Scripts under Section 2.12(a)(ii) above, then:

(i) Agency's response shall be delivered to Express Scripts within five (5) business days from the receipt of LEP report from Express Scripts;

(ii) Agency shall provide Express Scripts with the file listing all EGWP Enrollees for whom Agency was unable to attest; and

(iii) Express Scripts shall also mail an attestation to each EGWP Enrollee that has gap in coverage as defined by CMS.

(c) Agency will provide Express Scripts with the attestation in Express Scripts' standard form, which will be provided to Agency upon request, and a file listing of all the EGWP Enrollees included in the attestation.

(d) Express Scripts will collect responses to the attestations from Agency or EGWP Enrollees and submits EGWP Enrollees information to CMS for processing and determination of applicable LEP.

(e) CMS calculates the LEP amount and transmits the LEP amount to Express Scripts on the daily TRR file, which is communicated to Agency. Express Scripts shall invoice Agency for payment of the LEP, which shall be due and owing by the Agency to Express Scripts. Per the Medicare Drug Rules, the Agency may elect to either pay for the LEP on behalf of the EGWP Enrollee, or seek reimbursement of the LEP amount from the EGWP Enrollee. This election must be made prior to the beginning of the plan year and must be applied consistently by the Agency for all EGWP Enrollees throughout the plan year.

SECTION III. Program Operations

3.1 Program Reporting. Express Scripts or its Affiliate shall make available to the Agency Express Scripts' or its Affiliate's standard management information reporting applications. At the request of the Agency, Express Scripts or its Affiliate may develop special reporting packages at Express Scripts' or its Affiliate's standard hourly rate for such services, as set forth on Exhibit B-2.

3.2 Regulatory Reporting. Express Scripts also agrees to comply with the reporting requirements set forth in 42 C.F.R. §423.514, including reporting significant business transactions with parties in interest to CMS, notifying CMS of any loans or other financial arrangements that it makes with contractors, subcontractors, and related entities, and making such information available to EGWP Enrollees upon reasonable request.

3.3 Claims Data Retention. Express Scripts and the Agency will maintain, for a period of the then current plan year plus an additional ten (10) years, the applicable books, contracts, medical records, patient care documentation, and other records relating to covered services under this Amendment. Express Scripts and its Affiliate may use and disclose both during and after the term of this Agreement the anonymized claims data (de-identified in accordance with HIPAA) including drug and related medical data collected by Express Scripts or provided to Express Scripts by Agency for research; provider profiling; benchmarking, drug trend, and cost and other internal analyses and comparisons; clinical, safety and/or trend programs; ASES; or other Express Scripts business purposes, in all cases subject to applicable law.

3.4 Government Audits. Express Scripts and the Agency agree to allow the United States Department of Health and Human Services ("DHHS") and the Comptroller General, or their designees, the right to audit, evaluate, inspect books, contracts, medical records,

patient care documentation and other records relating to covered services under this Agreement, as are reasonably necessary to verify the nature and extent of the costs of the services provided to EGWP Enrollees under this Agreement, for a period of the then current plan year, plus an additional ten (10) years following termination or expiration of the Amendment for any reason, or until completion of any audit, whichever is later.

3.5 Performance Standards. Express Scripts will conform to the performance standards set forth on Exhibit E hereto. The payments set forth in Exhibit E will be Agency's sole monetary remedy for any failure by Express Scripts to meet a performance standard in addition to any correction or reimbursement associated with payment or billing errors.

3.6 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

SECTION IV. Compliance with Law; Financial Disclosure

4.1 Compliance with Law; Change in Law. Express Scripts and the Agency hereby agree to perform their respective obligations under this Agreement in a manner that is consistent with and complies with the Medicare Drug Rules and with Express Scripts' contractual obligations under its contract with CMS. In addition, each party shall be responsible for ensuring its compliance with all federal, state, and local laws and regulations applicable to its business, including maintaining any necessary licenses and permits. Agency shall be responsible for any government or regulatory charges and taxes directly imposed upon or related to the services provided hereunder. If the scope of Express Scripts' duties under this Agreement is made materially more burdensome or expensive due to a modification in federal, state or local laws or regulations or the interpretation thereof, including actions by CMS, the parties shall negotiate an appropriate modification of the services and/or an adjustment to the Fees paid to Express Scripts. If the parties cannot agree on a modification or adjusted Fees, then either party may terminate this Agreement on thirty (30) days prior written notice to the other. In addition, if any change in Federal or applicable state law or regulation (including the interpretation of existing laws or regulations by a court or administrative agency) occurs during the term of this Agreement, and in consequence thereof Express Scripts is required to increase payments for Covered Drugs to Participating Pharmacies in the applicable jurisdiction under its provider agreements, the Pharmacy Reimbursement Rates set forth in Exhibit B-1 will be increased by the same amount upon prior notice to Agency.

4.2 Disclosure of Certain Financial Matters. Agency acknowledges and agrees that Express Scripts will contract with its Affiliate, Express Scripts, to provide the pharmacy benefit management services contemplated by this Agreement on Express Scripts' behalf. In addition to the administrative fees paid to Express Scripts by Agency, Express Scripts and Express Scripts' wholly-owned subsidiaries or Affiliates derive revenue in one or more of the ways as further described in the ESI Financial Disclosure to PBM Clients set forth in Exhibit D hereto ("Financial Disclosure"), as updated by Express Scripts from time to time. Unlike the administrative fees, the revenues described in the Financial Disclosure are not direct or indirect compensation to Express Scripts from the Agency for services rendered to the Agency or the TRB Group Health Plan under this Agreement. In negotiating any of the fees and revenues described in the Financial Disclosure, Express Scripts and Express Scripts' wholly-owned subsidiaries and Affiliates act on their own behalf, and not for the benefit of or as agents for the Agency, EGWP Enrollees or the EGWP Benefit. Except for the Rebate and Manufacturer Administrative fees amounts set forth in Exhibit B-3, if any, Agency acknowledges and agrees that Express Scripts and Express Scripts' wholly-owned subsidiaries and Affiliates retain all interest, revenues, any or all Rebates and Manufacturer Administrative Fees not payable to Agency, and all

Participating Pharmacy discounts, if any, in addition to any administrative and other fees paid by Agency. Agency acknowledges for itself and its EGWP Enrollees that, except as may be expressly provided herein, neither it nor any EGWP Enrollee has a right to receive, or possesses any beneficial interest in, any such discounts or payments.

SECTION V. Miscellaneous

5.1 Independent Parties. No provision of this Agreement is intended to create or shall be construed to create any relationship between Express Scripts or its Affiliate and the Agency other than that of independent entities contracting with each other solely for the purpose of effecting the provisions of this Agreement. Neither party, nor any of their respective representatives, shall be construed to be the partner, agent, fiduciary, employee, or representative of the other and neither party shall have the right to make any representations concerning the duties, obligations or services of the other except as consistent with the express terms of this Agreement or as otherwise authorized in writing by the party about which such representation is asserted.

5.2 Taxes and Assessments. Any applicable sales, use, excise, or other similarly assessed and administered tax, surcharge, or fee imposed on items dispensed, or services provided hereunder, or the fees or revenues generated by the items dispensed or services provided hereunder, or any other amounts Express Scripts or one or more of its subsidiaries or affiliates may incur or be required to pay arising from or relating to Express Scripts' or its subsidiaries' or affiliates' performance of services as a pharmacy benefit manager, third-party administrator, or otherwise in any jurisdiction, will be the sole responsibility of the Agency or the EGWP Enrollee. If Express Scripts is legally obligated to collect and remit, or to incur or pay, any such sales, use, excise, or other similarly assessed and administered tax, surcharge, or fee in a particular jurisdiction, such amount will be reflected on the applicable invoice or subsequently invoiced at such time as Express Scripts becomes aware of such obligation or as such obligation becomes due. Express Scripts reserves the right to charge a reasonable administrative fee for collection and remittance services provided on behalf of Agency.

5.3 Severability. In the event that any provision of this Agreement is invalid or unenforceable, such invalid or unenforceable provision shall not invalidate or affect the other provisions of this Agreement which shall remain in effect and be construed as if such provision were not a part hereof; provided that if the invalidation or unenforceability of such provision shall, in the opinion of either party to the Agreement, have a material effect on such party's rights or obligations under this Agreement, then the Agreement may be terminated by such party upon thirty (30) days written notice by such party to the other party.

5.4 Third Party Beneficiary Exclusion. This Agreement is not a third-party beneficiary contract, nor shall this Agreement create any rights on behalf of EGWP Enrollees as against Express Scripts. Agency and Express Scripts reserve the right to amend, cancel or terminate this Agreement without notice to, or consent of, any EGWP Enrollee.

5.5 Trademarks. Each party acknowledges each other party's sole and exclusive ownership of its respective trade names, commercial symbols, trademarks, and service marks, whether presently existing or later established (collectively "Marks"). No party

shall use the other party's Marks in advertising or promotional materials or otherwise without the owner's prior written consent.

5.6 Debarment. Express Scripts or its Affiliate shall not knowingly employ, or subcontract with, an individual or an entity that employs or contracts with an individual, who is excluded from participation in Medicare under section 1128 or 1128A of the Act or from participation in a Federal health care program for the provision of health care, utilization review, medical social work, or administrative services.

5.7 Signatures. Any documents required to implement the terms of this Agreement shall be signed by a representative of each party with legal authority to bind the entity.

5.8 Federal Funds. The parties acknowledge that information provided in connection with this Agreement is used for purposes of obtaining federal funds and, as such, the parties are subject to certain laws that are applicable to individuals and entities receiving federal funds.

Exhibit D

FINANCIAL DISCLOSURE

As provided in the Agreement, MCLIC may provide services under this Agreement through one or more of its affiliates, including Express Scripts, Inc. (“ESI”). The following financial disclosure statement relates to the rebate programs and other financial arrangements that may be used by Express Scripts, Inc. (“ESI”) in connection with MCLIC’s administration of the EGWP Benefit under this Agreement.

FINANCIAL DISCLOSURE TO ESI PBM CLIENTS

This disclosure provides an overview of the principal revenue sources of Express Scripts, Inc. and Medco Health Solutions, Inc. (individually and collectively referred to herein as “ESI”), as well as ESI’s affiliates. In addition to administrative and dispensing fees paid to ESI by our clients for pharmaceutical benefit management (“PBM”) services, ESI and its affiliates derive revenue from other sources, including arrangements with pharmaceutical manufacturers, wholesale distributors, and retail pharmacies. Some of this revenue relates to utilization of prescription drugs by members of the clients receiving PBM services. ESI may pass through certain manufacturer payments to its clients or may retain those payments for itself, depending on the contract terms between ESI and the client.

Network Pharmacies – ESI contracts for its own account with retail pharmacies to dispense prescription drugs to client members. Rates paid by ESI to these pharmacies may differ among networks (e.g., Medicare, Worker’s Comp, open and limited), and among pharmacies within a network, and by client arrangements. PBM agreements generally provide that a client pays ESI an ingredient cost, plus dispensing fee, for drug claims. If the rate paid by a client exceeds the rate contracted with a particular pharmacy, ESI will realize a positive margin on the applicable claim. The reverse also may be true, resulting in negative margin for ESI. ESI also enters into pass-through arrangements where the client pays ESI the actual ingredient cost and dispensing fee amount paid by ESI for the particular claim when the claim is adjudicated to the pharmacy. In addition, when ESI receives payment from a client before payment to a pharmacy, ESI retains the benefit of the use of the funds between these payments. ESI may maintain non-client specific aggregate guarantees with pharmacies and may realize positive margin. ESI may charge pharmacies standard transaction fees to access ESI’s pharmacy claims systems and for other related administrative purposes.

Brand/Generic Classifications – Prescription drugs may be classified as either a “brand” or “generic;” however, the reference to a drug by its chemical name does not necessarily mean that the product is recognized as a generic for adjudication, pricing or copay purposes. For the purposes of pharmacy reimbursement, ESI distinguishes brands and generics through a proprietary algorithm (“BGA”) that uses certain published elements provided by First DataBank (FDB) including price indicators, Generic Indicator, Generic Manufacturer Indicator, Generic Name Drug Indicator, Innovator, Drug Class and ANDA. The BGA uses these data elements in a hierarchical process to categorize the products as brand or generic. The BGA also has processes to resolve discrepancies and prevent “flipping” between brand and generic status due to price fluctuations and marketplace availability changes. The elements listed above and sources are subject to change based on the availability of the specific fields. Updated summaries of the BGA are available upon request. Brand or generic classification for client reimbursement purposes is either based on the BGA or specific code indicators from Medi-Span or a combination of the two as reflected in the client’s specific contract terms. Application of an alternative methodology based on specific client contract terms does not affect ESI’s application of its BGA for ESI’s other contracts.

Maximum Allowable Cost (“MAC”)/Maximum Reimbursement Amount (“MRA”) – As part of the administration of the PBM services, ESI maintains a MAC List of drug products identified as requiring pricing management due to the number of manufacturers, utilization and/or pricing volatility. The criteria for inclusion on the MAC List are based on whether the drug has readily available generic product(s), is generally equivalent to a brand drug, is cleared of any negative clinical implications, and has a cost basis that will allow for pricing below brand rates. ESI also maintains MRA price lists for drug products on the MAC List based on current price reference data provided by MediSpan or other nationally recognized pricing source, market pricing and availability information from generic manufacturers and on-line research of national wholesale drug company files, and client arrangements. Similar to the BGA, the elements listed above and sources are subject to change based on the availability of the specific fields. Updated summaries of the MAC methodology are available upon request.

Manufacturer Programs Formulary Rebates, Associated Administrative Fees, and PBM Service Fees – ESI contracts for its own account to obtain formulary rebates attributable to the utilization of certain brand drugs and supplies (and possibly certain authorized generics marketed under a brand manufacturer’s new drug application). Formulary rebate amounts received vary based on client specific utilization, the volume of utilization as well as formulary position applicable to the drug or supplies, and adherence to various formulary management controls, benefit design requirements, claims volume, and other similar factors, and in certain instances also may vary based on the product’s market-share. ESI often pays an amount equal to all or a portion of the formulary rebates it receives to a client based on the client’s PBM agreement terms. ESI or its affiliates may maintain non-client specific aggregate guarantees and may realize positive margin. In addition, ESI provides administrative services to contracted manufacturers, which include, for example, maintenance and operation of systems and other infrastructure necessary for invoicing and processing rebates, pharmacy discount programs, access to drug utilization data, as allowed by law, for purposes of verifying and evaluating applicable payments, and for other purposes related to the manufacturer’s products. ESI receives administrative fees from the participating manufacturers for these services. These administrative fees are calculated based on the price of the drug or supplies along with the volume of utilization and do not exceed the greater of (i) 4.58% of the average wholesale price, or (ii) 5.5% of the wholesale acquisition cost of the products. In its capacity as a PBM company, ESI also may receive other compensation from manufacturers for the performance of various programs or services, including, for example, formulary compliance initiatives, clinical services, therapy management services, education services, inflation protection programs, medical benefit management services, cost containment programs, discount programs, and the sale of non-patient identifiable claim information. This compensation is not part of the formulary rebates or associated administrative fees, and ESI may realize positive margin between amounts paid to clients and amounts received from pharmaceutical manufacturers. ESI retains the financial benefit of the use of any funds held until payment is made to the client.

Copies of ESI’s standard formularies will be made available upon request. In addition to formulary considerations, other plan design elements are described in ESI’s Plan Design Review Guide, which will be made available upon request.

ESI Subsidiary Pharmacies – ESI has several licensed pharmacy subsidiaries, including our specialty pharmacies. These entities may maintain product purchase discount arrangements and/or fee-for-service arrangements with pharmaceutical manufacturers, wholesale distributors, and other health care providers. These subsidiary pharmacies contract for these arrangements on their own account in support of their various pharmacy operations. Many of these subsidiary arrangements relate to services provided outside of PBM arrangements, and may be entered into irrespective of whether the particular drug is on one of ESI’s national formularies. Discounts and fee-for-service payments received by ESI’s subsidiary pharmacies are not part of the PBM formulary rebates or associated administrative fees paid to ESI in connection with ESI’s PBM formulary rebate programs. However, certain purchase discounts

received by ESI's subsidiary pharmacies, whether directly or through ESI, may be considered for formulary purposes if the value of such purchase discounts is used by ESI to supplement the discount on the ingredient cost of the drug to the client based on the client's PBM agreement terms. From time to time, ESI and its affiliates also may pursue and maintain for its own account other supply chain sourcing relationships not described below as beneficial to maximize ESI's drug purchasing capabilities and efficiencies, and ESI or affiliates may realize an overall positive margin with regard to these initiatives.

The following provides additional information regarding examples of ESI subsidiary discount arrangements and fee-for-service arrangements with pharmaceutical manufacturers, and wholesale distributors:

ESI Subsidiary Pharmacy Discount Arrangements – ESI subsidiary pharmacies purchase prescription drug inventories, either from manufacturers or wholesalers, for dispensing to patients. Often, purchase discounts off the acquisition cost of these products are made available by manufacturers and wholesalers in the form of either up-front discounts or retrospective discounts. These purchase discounts, obtained through separate purchase contracts, are not formulary rebates paid in connection with our PBM formulary rebate programs. Drug purchase discounts are based on a pharmacy's inventory needs and, at times, the performance of related patient care services and other performance requirements. When a subsidiary pharmacy dispenses a product from its inventory, the purchase price paid for the dispensed product, including applicable dispensing fees, may be greater or less than that pharmacy's acquisition cost for the product net of purchase discounts. In general, our pharmacies realize an overall positive margin between the net acquisition cost and the amounts paid for the dispensed drugs.

ESI Subsidiary Fee-For-Service Arrangements – One or more of ESI's subsidiaries, including, but not limited to, its subsidiary pharmacies also may receive fee-for-service payments from manufacturers, wholesalers, or other health care providers in conjunction with various programs or services, including, for example, patient assistance programs for indigent patients, dispensing prescription medications to patients enrolled in clinical trials, various therapy adherence and fertility programs, administering FDA compliance requirements related to the drug, 340B contract pharmacy services, product reimbursement support services, and various other clinical or pharmacy programs or services. As a condition to having access to certain products, and sometimes related to certain therapy adherence criteria or FDA requirements, a pharmaceutical manufacturer may require a pharmacy to report selected information to the manufacturer regarding the pharmacy's service levels and other dispensing-related data with respect to patients who receive that manufacturer's product. A portion of the discounts or other fee-for-service payments made available to our pharmacies may represent compensation for such reporting.

Other Manufacturer Arrangements – ESI also maintains other lines of business that may involve discount and service fee relationships with pharmaceutical manufacturers and wholesale distributors. Examples of these businesses include a wholesale distribution business, group purchasing organizations (and related group purchasing organization fees), a medical benefit management company, and United BioSource Corporation ("UBC"). Compensation derived through these business arrangements is not considered for PBM formulary placement, and is in addition to other amounts described herein. Of particular note, UBC partners with life sciences and pharmaceutical companies to develop, commercialize, and support safe, effective use and access to pharmaceutical products. UBC maintains a team of research scientists, biomedical experts, research operations professionals, technologists and clinicians who work with clients to conduct and support clinical trials, create, and validate and administer pre and post product safety and risk management programs. UBC also works on behalf of pharmaceutical manufacturers to provide product and disease state education programs, reimbursement assistance, and other support services

to the public at large. These service fees are not part of the formulary rebates or associated administrative fees.

Third Party Data Sales – Consistent with any client contract limitations, ESI or its affiliates may sell HIPAA compliant information maintained in their capacity as a PBM, pharmacy, or otherwise to data aggregators, manufacturers, or other third parties on a fee-for-service basis or as a condition of discount eligibility. All such activities are conducted in compliance with applicable patient and pharmacy privacy laws and client contract restrictions.

October 1, 2015

THIS EXHIBIT REPRESENTS ESI'S FINANCIAL POLICIES. THE STATE MAY REQUEST THE MOST CURRENT COPY OF ESI'S FINANCIAL DISCLOSURE AT ANY TIME.

EXHIBIT E

PERFORMANCE STANDARDS

In the event that any failure by Express Scripts to meet any performance standard is due to a “force majeure” as defined in the Agreement, failure of Agency to perform its obligations under the Agreement, or actions or inactions of Agency that the parties agree have or will adversely impact Express Scripts’ ability to maintain the subject standard (e.g., faulty eligibility, changes in benefit design not adequately communicated to EGWP Enrollees and benefit designs that substantially change the EGWP Enrollees’ rights under the Plan), Express Scripts will be excused from compliance with such performance standards until such circumstances have been resolved and any existing backlogs or other related effects have been eliminated.

Within [REDACTED] after the end of each year, Express Scripts shall report to Agency Express Scripts’ performance under each performance standard. Notwithstanding the foregoing, for purposes of determining whether Express Scripts has met or failed to meet each performance standard, performance standards will be measured and reconciled on an annual basis and amounts due resulting from an Express Scripts failure to meet any performance standard(s), if any, shall be calculated and paid to Agency [REDACTED] following Agency’s receipt of reconciliation report.

No performance penalties, if any, will be paid until this Agreement is executed by Agency. In no event will the sum of the payments to Agency, as a result of Express Scripts’ failure to meet the performance standards exceed [REDACTED] per year for the annual performance standards.

The following performance standards [REDACTED] as of the Effective Date and throughout the Term. Any material change below such number may result in a renegotiation of the standards and penalties set forth below.

[REDACTED]

Service Feature	Standard	Penalty
[REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]



Notice to Executive Branch State Contractors and Prospective State Contractors of Campaign Contribution and Solicitation Limitations

This notice is provided under the authority of Connecticut General Statutes §9-612(g)(2), as amended by P.A. 10-1, and is for the purpose of informing state contractors and prospective state contractors of the following law (*italicized words are defined on the reverse side of this page*).

CAMPAIGN CONTRIBUTION AND SOLICITATION LIMITATIONS

No *state contractor, prospective state contractor, principal of a state contractor or principal of a prospective state contractor*, with regard to a *state contract or state contract solicitation* with or from a state agency in the executive branch or a quasi-public agency or a holder, or principal of a holder of a valid prequalification certificate, shall make a contribution to (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee (which includes town committees).

In addition, no holder or principal of a holder of a valid prequalification certificate, shall make a contribution to (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of State senator or State representative, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee.

On and after January 1, 2011, no state contractor, prospective state contractor, principal of a state contractor or principal of a prospective state contractor, with regard to a state contract or state contract solicitation with or from a state agency in the executive branch or a quasi-public agency or a holder, or principal of a holder of a valid prequalification certificate, shall **knowingly solicit** contributions from the state contractor's or prospective state contractor's employees or from a *subcontractor or principals of the subcontractor* on behalf of (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee.

DUTY TO INFORM

State contractors and prospective state contractors are required to inform their principals of the above prohibitions, as applicable, and the possible penalties and other consequences of any violation thereof.

PENALTIES FOR VIOLATIONS

Contributions or solicitations of contributions made in violation of the above prohibitions may result in the following civil and criminal penalties:

Civil penalties—Up to \$2,000 or twice the amount of the prohibited contribution, whichever is greater, against a principal or a contractor. Any state contractor or prospective state contractor which fails to make reasonable efforts to comply with the provisions requiring notice to its principals of these prohibitions and the possible consequences of their violations may also be subject to civil penalties of up to \$2,000 or twice the amount of the prohibited contributions made by their principals.

Criminal penalties—Any knowing and willful violation of the prohibition is a Class D felony, which may subject the violator to imprisonment of not more than 5 years, or not more than \$5,000 in fines, or both.

CONTRACT CONSEQUENCES

In the case of a state contractor, contributions made or solicited in violation of the above prohibitions may result in the contract being voided.

In the case of a prospective state contractor, contributions made or solicited in violation of the above prohibitions shall result in the contract described in the state contract solicitation not being awarded to the prospective state contractor, unless the State Elections Enforcement Commission determines that mitigating circumstances exist concerning such violation.

The State shall not award any other state contract to anyone found in violation of the above prohibitions for a period of one year after the election for which such contribution is made or solicited, unless the State Elections Enforcement Commission determines that mitigating circumstances exist concerning such violation.

Additional information may be found on the website of the State Elections Enforcement Commission, www.ct.gov/seec. Click on the link to "Lobbyist/Contractor Limitations."



DEFINITIONS

"State contractor" means a person, business entity or nonprofit organization that enters into a state contract. Such person, business entity or nonprofit organization shall be deemed to be a state contractor until December thirty-first of the year in which such contract terminates. "State contractor" does not include a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person's capacity as a state or quasi-public agency employee.

"Prospective state contractor" means a person, business entity or nonprofit organization that (i) submits a response to a state contract solicitation by the state, a state agency or a quasi-public agency, or a proposal in response to a request for proposals by the state, a state agency or a quasi-public agency, until the contract has been entered into, or (ii) holds a valid prequalification certificate issued by the Commissioner of Administrative Services under section 4a-100.

"Prospective state contractor" does not include a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person's capacity as a state or quasi-public agency employee.

"Principal of a state contractor or prospective state contractor" means (i) any individual who is a member of the board of directors of, or has an ownership interest of five per cent or more in, a state contractor or prospective state contractor, which is a business entity, except for an individual who is a member of the board of directors of a nonprofit organization, (ii) an individual who is employed by a state contractor or prospective state contractor, which is a business entity, as president, treasurer or executive vice president, (iii) an individual who is the chief executive officer of a state contractor or prospective state contractor, which is not a business entity, or if a state contractor or prospective state contractor has no such officer, then the officer who duly possesses comparable powers and duties, (iv) an officer or an employee of any state contractor or prospective state contractor who has *managerial or discretionary responsibilities with respect to a state contract*, (v) the spouse or a *dependent child* who is eighteen years of age or older of an individual described in this subparagraph, or (vi) a political committee established or controlled by an individual described in this subparagraph or the business entity or nonprofit organization that is the state contractor or prospective state contractor.

"State contract" means an agreement or contract with the state or any state agency or any quasi-public agency, let through a procurement process or otherwise, having a value of fifty thousand dollars or more, or a combination or series of such agreements or contracts having a value of one hundred thousand dollars or more in a calendar year, for (i) the rendition of services, (ii) the furnishing of any goods, material, supplies, equipment or any items of any kind, (iii) the construction, alteration or repair of any public building or public work, (iv) the acquisition, sale or lease of any land or building, (v) a licensing arrangement, or (vi) a grant, loan or loan guarantee. "State contract" does not include any agreement or contract with the state, any state agency or any quasi-public agency that is exclusively federally funded, an education loan, a loan to an individual for other than commercial purposes or any agreement or contract between the state or any state agency and the United States Department of the Navy or the United States Department of Defense.

"State contract solicitation" means a request by a state agency or quasi-public agency, in whatever form issued, including, but not limited to, an invitation to bid, request for proposals, request for information or request for quotes, inviting bids, quotes or other types of submittals, through a competitive procurement process or another process authorized by law waiving competitive procurement.

"Managerial or discretionary responsibilities with respect to a state contract" means having direct, extensive and substantive responsibilities with respect to the negotiation of the state contract and not peripheral, clerical or ministerial responsibilities.

"Dependent child" means a child residing in an individual's household who may legally be claimed as a dependent on the federal income tax of such individual.

"Solicit" means (A) requesting that a contribution be made, (B) participating in any fund-raising activities for a candidate committee, exploratory committee, political committee or party committee, including, but not limited to, forwarding tickets to potential contributors, receiving contributions for transmission to any such committee or bundling contributions, (C) serving as chairperson, treasurer or deputy treasurer of any such committee, or (D) establishing a political committee for the sole purpose of soliciting or receiving contributions for any committee. Solicit does not include: (i) making a contribution that is otherwise permitted by Chapter 155 of the Connecticut General Statutes; (ii) informing any person of a position taken by a candidate for public office or a public official, (iii) notifying the person of any activities of, or contact information for, any candidate for public office; or (iv) serving as a member in any party committee or as an officer of such committee that is not otherwise prohibited in this section.

"Subcontractor" means any person, business entity or nonprofit organization that contracts to perform part or all of the obligations of a state contractor's state contract. Such person, business entity or nonprofit organization shall be deemed to be a subcontractor until December thirty first of the year in which the subcontract terminates. "Subcontractor" does not include (i) a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or (ii) an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person's capacity as a state or quasi-public agency employee.

"Principal of a subcontractor" means (i) any individual who is a member of the board of directors of, or has an ownership interest of five per cent or more in, a subcontractor, which is a business entity, except for an individual who is a member of the board of directors of a nonprofit organization, (ii) an individual who is employed by a subcontractor, which is a business entity, as president, treasurer or executive vice president, (iii) an individual who is the chief executive officer of a subcontractor, which is not a business entity, or if a subcontractor has no such officer, then the officer who duly possesses comparable powers and duties, (iv) an officer or an employee of any subcontractor who has managerial or discretionary responsibilities with respect to a subcontract with a state contractor, (v) the spouse or a dependent child who is eighteen years of age or older of an individual described in this subparagraph, or (vi) a political committee established or controlled by an individual described in this subparagraph or the business entity or nonprofit organization that is the subcontractor.